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1 scenario? It's not a hypothetical. You have a  
2 company with a CEO who opposes the transaction,  
3 votes his shares against the transaction, and  
4 does not believe that the transaction is in the  
5 best interest of shareholders. Do you believe  
6 that with those facts, which are the facts in  
7 this case, that that information should be  
8 disclosed to the OHSL shareholders?

9 MS. ROWE: Objection.

10 MR. FISCHER: Objection.

11 MR. BUCKLEY: Objection.

12 MS. ROWE: Misstates the record.

13 A. I have no basis to say that should  
14 be disclosed or not disclosed. It would -- in  
15 any particular context.

16 Q. What do you mean, you have no  
17 basis?

18 A. I have no, no specific legal  
19 knowledge or basis that would tell me that in  
20 those circumstances a CEO would have to  
21 disclose certain information or withhold  
22 certain information.

23 Q. Now, you hold a JD from the  
24 University of Kentucky, correct?

25 A. Yes.

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1 don't know what in this particular instance or  
2 a similar circumstance a CEO would or would not  
3 be required to disclose. I simply don't know  
4 what that standard would be.

5 Q. Do you think it's fair not to  
6 disclose that?

7 MR. FISCHER: Objection.

8 MR. BUCKLEY: Objection.

9 MS. ROWE: Objection.

10 A. It would depend upon the  
11 circumstances of the transaction, whether it  
12 was fair or unfair. That's in my mind a matter  
13 of opinion.

14 Q. And what's your opinion?

15 MS. ROWE: Objection.

16 MR. FISCHER: Objection,  
17 relevance.

18 A. With respect to the transaction --

19 MR. FISCHER: Form.

20 A. -- I don't know enough about the  
21 details of the transaction as far as the  
22 business points, whether that would be a fair  
23 or unfair disclosure in the overall context of  
24 the transaction -- of this transaction.

25 Q. What factors would you need to

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1 Q. And you were the editor of the  
2 Kentucky Law Journal, correct?

3 A. Articles editor, yes.

4 Q. And you are a lieutenant commander  
5 in the United States Naval Reserve, correct?

6 A. Yes.

7 Q. And you've been doing this work  
8 for about five years, with the KMK firm,  
9 correct?

10 MS. ROWE: Objection.

11 A. Yes.

12 Q. And it's your testimony under oath  
13 that you have no basis for assessing whether or  
14 not the opposition of the CEO, the largest  
15 shareholder, and a Board member who is the only  
16 member of management, whether his opposition to  
17 the transaction is material information and  
18 should be disclosed?

19 MR. FISCHER: Objection.

20 Q. Is that your testimony?

21 MR. FISCHER: Objection.

22 A. Yes. In the context of any  
23 securities filing, any specific requirements.  
24 The requirements are specific to what the law  
25 requires. That's not my area of practice. I

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1 consider to make a determination?

2 MS. ROWE: Objection.

3 MR. FISCHER: Objection.

4 A. As a general statement, and not  
5 specific to this transaction, one would  
6 evaluate the, the extent of whether the  
7 shareholders of the company are better or worse  
8 before and after the transaction.

9 Q. Really? Why would you do that?

10 A. Again, I think you're asking me  
11 with respect to a specific opinion regarding  
12 matters with respect to public companies and  
13 what's required and not required. And I'm  
14 really not in a position, don't have the  
15 background to give you answers to these  
16 questions.

17 Q. Okay. You talked earlier in your  
18 previous answer about you'd have to evaluate  
19 whether the shareholders were better or worse  
20 after the transaction. Do you remember that  
21 testimony generally?

22 A. As a general statement, yes.

23 Q. Okay. Now, my question to you is,  
24 isn't the purpose of a proxy material and  
25 registration statement, such as Defendant's

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1 Exhibit 1, to provide information to the  
2 shareholders and let them make their own  
3 decisions? Correct?

4 MR. FISCHER: Objection.

5 MR. BUCKLEY: Objection.

6 MS. ROWE: Objection. Asked and  
7 answered.

8 MR. FISCHER: And form.

9 A. Again, I'm not an expert in what  
10 the specific purposes of a proxy statement are  
11 or are not for.

12 Q. Okay. Let me ask you a slightly  
13 different question. If Mr. Burke's statement  
14 to the Cincinnati Business Courier is true,  
15 that Hanauer opposed the transaction because he  
16 wanted Oak Hills to remain independent, is it  
17 your opinion as you sit here today, under oath,  
18 that that information should have been  
19 disclosed to the OHSL shareholders?

20 MS. ROWE: Objection.

21 MR. FISCHER: Objection.

22 MR. BUCKLEY: Objection.

23 MR. FISCHER: Hypothetical, form.

24 MS. ROWE: Misstates the testimony  
25 and the exhibit.

1 was in charge of deciding whether or not Mr.  
2 Hanauer's opposition to the transaction was  
3 disclosed?

4 MS. ROWE: Objection to form.

5 MR. FISCHER: Objection.

6 A. I have no basis -- I don't know  
7 Mr. Hanauer's position then or now. During the  
8 transaction I was not aware of his position or  
9 any opposition. I don't know who at KMK would  
10 evaluate the materiality, the requirements for  
11 disclosing that information.

12 Q. Was there someone who was tasked  
13 with evaluating the overall materiality for the  
14 document?

15 A. I don't know.

16 Q. And as you sit here today, you  
17 have no opinion as to whether or not the  
18 opposition of the largest shareholder, the CEO  
19 of the company, and the only member of  
20 management to serve on the Board, is material  
21 or not?

22 MR. FISCHER: Objection.

23 MS. ROWE: Objection.

24 A. No, I don't have an opinion  
25 whether the totality of the circumstances and

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1 A. No. I have no basis to say that  
2 information should or should not -- whatever  
3 his position was, whether this statement is  
4 accurate or inaccurate. I don't know. I don't  
5 have a basis to judge whether that should be  
6 disclosed, whether it was disclosed. I don't  
7 know.

8 Q. Okay. Who on the KMK team would  
9 make such a decision with respect to this  
10 document, Defendant's Exhibit 1?

11 MS. ROWE: Objection. What  
12 decision?

13 MR. FISCHER: I was going to say,  
14 what are you referring to, Mr. Brautigam? What  
15 decision?

16 MR. BRAUTIGAM: We're doing fine,  
17 Pat.

18 MR. FISCHER: What decision?

19 MR. BRAUTIGAM: The witness knows  
20 what I'm talking about.

21 MR. FISCHER: Objection to form.

22 A. Could you repeat the question,  
23 please?

24 BY MR. BRAUTIGAM:

25 Q. Certainly. Who on the KMK team

1 facts, that that would be material or  
2 immaterial.

3 Q. Okay. During the time you worked  
4 on the OHSL-Provident merger, did you ever  
5 learn that Mr. Hanauer was opposed to the  
6 merger transaction?

7 A. No.

8 Q. Did you ever learn that Mr.  
9 Hanauer was not fully cooperating in making the  
10 merger happen?

11 A. To my recollection, no.

12 Q. After the merger closed, aside  
13 from today, did you ever learn that Mr. Hanauer  
14 had been opposed to the merger transaction?

15 MR. FISCHER: To the extent you  
16 can answer that without revealing  
17 communications with counsel, go ahead and  
18 answer.

19 A. Before you presented Defendant's  
20 Exhibit today, I don't have any specific  
21 recollection of Kenneth Hanauer by name being  
22 opposed to the merger transaction.

23 Q. Okay. Did you have an  
24 understanding that a Board member or more than  
25 one Board member on the OHSL Board was opposed

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1 to the merger?

2 MR. FISCHER: At what time?

3 Q. At any time.

4 MR. FISCHER: Same instruction.

5 Don't disclose anything you and I have talked  
6 about.

7 MR. BRAUTIGAM: I just want to make  
8 it clear that when you say don't disclose  
9 anything that Mr. Winstead and you have talked  
10 about, that includes, in your mind, the meeting  
11 with many KMK attorneys who were also in the  
12 room where he was not giving or seeking legal  
13 advice. Is that correct?

14 MR. FISCHER: No. You didn't hear  
15 what I said when we opened up this afternoon's  
16 session.

17 MR. BRAUTIGAM: No, I listened to  
18 every word very carefully.

19 MR. FISCHER: Go ahead. You can  
20 answer the question.

21 A. As a general statement, in  
22 anticipation of this deposition I became aware  
23 that there was a pending lawsuit, obviously, or  
24 I wouldn't be here today. I had very general  
25 understanding that there was alleged

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1 any specific knowledge governing director  
2 opposition.

3 Q. Okay. At this point I'm not  
4 interested in general awareness of a lawsuit.  
5 I'm not interested in a lawsuit at all. Before  
6 this lawsuit, in the summer of 1999, were you  
7 ever aware that there was any opposition by any  
8 member of management or any member of OHSL's  
9 Board to the merger with Provident?

10 A. No.

11 Q. Okay. Did KMK have access to the  
12 OHSL Board minutes?

13 MS. ROWE: When?

14 MR. FISCHER: When?

15 Q. In the summer of 1999, during the  
16 due diligence phase of the merger transaction.

17 A. I don't know.

18 Q. Isn't that typical for a merger  
19 transaction?

20 MS. ROWE: Objection.

21 MR. FISCHER: Objection.

22 MR. BUCKLEY: Objection.

23 A. Specifically which Board minutes  
24 are you asking about?

25 Q. Okay. KMK represented Provident

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1 shareholder opposition to the transaction.  
2 Beyond that, I did not have any detailed  
3 understanding or had not reviewed any --  
4 anything related to this lawsuit.

5 Q. You said "shareholder opposition"  
6 in your previous answer. Is that what you  
7 meant to say?

8 A. Opposition of anyone.

9 Q. Okay. Well, there was opposition,  
10 because not all of the shareholders voted in  
11 favor of the transaction, correct?

12 A. By opposition -- let me be  
13 specific. Opposition to the extent that there  
14 was a party to file a lawsuit contesting -- and  
15 I'm not even sure what the lawsuit contests and  
16 claims in the lawsuit, but there was an  
17 aggrieved party -- an alleged aggrieved party.

18 Q. Okay. How about opposition from  
19 within the OHSL Board? Before today, did you  
20 ever learn of any opposition from within the  
21 OHSL Board?

22 MR. FISCHER: Same instruction.

23 A. Again, my recollection in  
24 anticipation of coming to this deposition is a  
25 general awareness of a lawsuit. I don't recall

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1 in this transaction, correct?

2 A. Yes.

3 Q. And Provident was the buyer,  
4 correct?

5 MR. FISCHER: Objection to the  
6 term "buyer."

7 A. My recollection is that it was a  
8 merger transaction. Provident Bank was the  
9 acquiring party, roughly equivalent to buyer,  
10 yes.

11 Q. Okay. And did KMK represent the  
12 institution PFGI, Inc., or the Provident Board  
13 members, or something else?

14 MR. FISCHER: Objection.

15 MS. ROWE: Objection.

16 A. I don't know the specific  
17 definition of which Provident parties KMK  
18 represented.

19 Q. Okay. Who did you represent when  
20 you worked on the transaction?

21 A. Again, I billed my time to a  
22 specific matter. I don't recall whether it was  
23 a Provident Bank or Provident Financial Corp  
24 matter.

25 Q. Did you ever represent the

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1 Provident directors?

2 A. Not -- I don't know.

3 Q. You don't know who your client  
4 was?

5 MR. FISCHER: Objection.

6 A. My answer is, I don't know if our  
7 representation encompassed the Provident  
8 directors.

9 Q. So you don't know who your client  
10 was?

11 MS. ROWE: Objection.

12 MR. FISCHER: Objection. Arguing.

13 A. Again, my answer is, I don't  
14 recall which client matter code this was billed  
15 to. My recollection, it was a Provident Bank  
16 matter or a Provident Financial Group matter.  
17 Beyond that, I'm not sure who the client -- who  
18 the client encompassed.

19 Q. What is your understanding of the  
20 role of the attorneys for the acquiring entity?

21 MR. FISCHER: Objection,  
22 overbroad.

23 A. I'm not sure I understand. As a  
24 general question, the role of the parties for  
25 the acquiring entity is to represent the

1 earlier as an exhibit document was one document  
2 that KMK worked on. My understanding is that  
3 KMK participated in the mutual preparation of  
4 the proxy statement.

5 Q. Okay. What did KMK do as it  
6 assisted in the mutual preparation of the proxy  
7 statement?

8 MR. FISCHER: Objection.

9 MS. ROWE: Objection.

10 A. I don't know.

11 Q. Did KMK have to rely on  
12 information it received from Oak Hills?

13 MS. ROWE: Objection.

14 MR. FISCHER: Same objection.

15 A. Based on my role in this  
16 transaction, I don't know what information was  
17 provided to KMK, but he -- and generally it  
18 would be a mutual effort of the attorneys  
19 representing both parties. Information would  
20 be provided from both clients, so their  
21 attorneys and documents would be produced from  
22 that -- those multiple sources.

23 Q. And what, if anything, did KMK do  
24 to check the veracity of the information that  
25 was received from the multiple sources you

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1 acquiring entity.

2 Q. Okay. And did KMK do that?

3 MS. ROWE: Objection.

4 A. My understanding and my knowledge  
5 is that KMK represented Provident in this  
6 transaction.

7 Q. Okay. What did KMK do in terms of  
8 its representation of Provident in this  
9 transaction?

10 MR. FISCHER: Objection. Broad.

11 MS. ROWE: Same objection.

12 A. In the transaction there were  
13 multiple documents, multiple matters to be  
14 attended to. In the negotiation, the firm  
15 represented Provident in many of those matters.  
16 I don't know the extent or the specifics beyond  
17 the areas that I participated with.

18 Q. Okay. You talked about multiple  
19 documents. What documents are you talking  
20 about?

21 MS. ROWE: Objection.

22 MR. FISCHER: The same objection.

23 A. I don't recall the specific  
24 documents that were unique to this transaction.  
25 The Agreement and Plan of Merger presented

1 talked about?

2 MS. ROWE: Objection.

3 MR. FISCHER: Objection.

4 A. I don't know.

5 Q. Do you know if KMK did anything to  
6 check the veracity of this information?

7 MS. ROWE: Objection.

8 MR. FISCHER: Same objection.

9 A. And my testimony is I did not  
10 participate in the preparation of the proxy  
11 statement, beyond my recollection of preparing  
12 a one paragraph long summary of the terms of  
13 the merger.

14 Q. Okay. Do you think you could look  
15 through Defendant's Exhibit 1 and find that,  
16 please?

17 A. What I -- I prepared an initial  
18 draft of a summary. To my recollection, I  
19 provided that to Mark Reuter for incorporation  
20 in the proxy statement. I have no recollection  
21 of actually working within the proxy statement  
22 or any point, any involvement in manipulation  
23 of this document. So to look to the document,  
24 what I produced was not an identifiable  
25 paragraph, to the extent of my memory.

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1 Q. How would you know that if you  
2 didn't look at every page of the document?

3 A. I can certainly look to see if  
4 anything looks familiar. Again, it was an  
5 initial draft prepared for inclusion in the  
6 proxy statement.

7 MR. FISCHER: If you want him to  
8 look through every page, we'll be glad to do  
9 that.

10 Q. Well, maybe between now and the  
11 time he comes back. Approximately how long was  
12 this summary?

13 A. To the best of my recollection, no  
14 more than a paragraph.

15 Q. And how many sentences were  
16 contained in that paragraph, roughly?

17 A. I don't remember beyond it being a  
18 paragraph, taking up maybe a third or a half of  
19 a page.

20 Q. And what was the general subject  
21 matter of that paragraph?

22 MS. ROWE: Objection. Asked and  
23 answered.

24 A. My recollection is that it was a  
25 very general summary of the terms of the merger

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1 happened with respect to the Provident  
2 restatement?

3 MR. FISCHER: Objection.

4 MS. ROWE: Objection.

5 A. My recollection is that there was  
6 a restatement regarding certain securitization  
7 transactions. I think there may have been two  
8 separate disclosures from Provident perhaps  
9 regarding two separate restatements, or maybe  
10 the same restatement and it's simply additional  
11 information.

12 I don't recall the specifics of  
13 the restatements beyond that they had to do  
14 with how certain securitization transactions  
15 were transpired for accounting purposes.

16 Q. What does it mean to restate the  
17 financial statements of a public company?

18 MR. FISCHER: Objection.

19 A. I'm not an accountant, but as a  
20 layman, my understanding is it's simply what is  
21 a restatement or a redocumentation of the  
22 financial statements, the numbers in those  
23 financial statements.

24 Q. Now, in your answer you said as a  
25 layman. Isn't it necessary for you to have a

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1 agreement.

2 Q. When you say the terms, the fact  
3 that it was a stock for stock transaction?

4 A. My recollection would be the most  
5 basic of the transaction, the parties involved,  
6 consideration -- again, I don't remember the  
7 specifics of what was in the summary.

8 Q. What was the consideration?

9 A. I don't remember.

10 Q. Well, it was Provident stock,  
11 correct?

12 A. My recollection is that it was a  
13 stock transaction.

14 Q. Okay. Are you familiar with the  
15 term materially misstated as accountants  
16 sometimes use it?

17 A. No.

18 Q. Okay. Are you familiar with  
19 Provident's restatement on or about March 5th,  
20 2003?

21 MS. ROWE: Objection. Relevance.

22 A. Only to the extent of having read  
23 or heard about it in general publications,  
24 local papers, that type of source.

25 Q. What is your understanding of what

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1 working knowledge of restatements as someone  
2 who has a broad range of experience in complex  
3 financial transactions, including asset based  
4 lending, workouts, secured party sales, and  
5 mergers and acquisitions involving financial  
6 institutions?

7 MS. ROWE: Objection.

8 MR. FISCHER: Same objection.

9 A. Can you repeat your question,  
10 please?

11 Q. Certainly. In your previous  
12 answer you indicated that you were giving the  
13 answer as a layman. Do you remember that  
14 testimony in general?

15 A. Yes, I recall that was my general  
16 preface.

17 Q. Right. And my question is, isn't  
18 it necessary for you to have a working  
19 understanding of what a restatement is as  
20 someone who practices in the area of complex  
21 financial transactions, including asset based  
22 lending, workouts, secured party sales, and  
23 mergers and acquisitions involving financial  
24 institutions?

25 MS. ROWE: Objection.



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1 MR. FISCHER: Same objection.  
 2 A. A restatement is an accounting  
 3 term. I'm not an accountant. I'm not a CPA.  
 4 My work doesn't require me to have a detailed  
 5 understanding of principles of restatements.  
 6 Q. Okay. Do you have a general  
 7 understanding of principles of restatements?  
 8 A. Not beyond the general conception  
 9 that I hold that I answered --  
 10 Q. Okay.  
 11 A. -- to the previous question.  
 12 Q. Is it your understanding that by  
 13 restating Provident's financials from '97 to  
 14 2002, that Provident has conceded that the  
 15 financials were materially misstated during  
 16 those years?  
 17 MS. ROWE: Objection.  
 18 MR. BUCKLEY: Objection.  
 19 MR. FISCHER: Objection.  
 20 A. No, that's not my understanding.  
 21 Q. Okay. What is your understanding?  
 22 A. I don't have an understanding as  
 23 to what the -- what the specific legal or, or  
 24 general context of Provident's statings may or  
 25 may not mean.

1 Q. What does the word unanimous mean?  
 2 A. As a general statement, everyone  
 3 in favor.  
 4 Q. Okay. Let's take a look at the  
 5 first page of Defendant's Exhibit 1. Do you  
 6 see that? Do you see the paragraph, it's the  
 7 third one from the bottom, and the first  
 8 sentence says, Your Board of Directors  
 9 unanimously approved the acquisition and  
 10 believes that it is in the best interest of  
 11 OHSL stockholders. Do you see that?  
 12 A. Yes, I see that sentence.  
 13 Q. Okay. Did I read it correctly?  
 14 A. Yes.  
 15 Q. How many directors did OHSL have  
 16 in 1999?  
 17 A. I don't know.  
 18 Q. Who would know?  
 19 A. Who would know that?  
 20 Q. Yes.  
 21 MS. ROWE: Objection.  
 22 MR. FISCHER: Objection.  
 23 Q. Let me ask it a little  
 24 differently. Who at KMK would know the number  
 25 of directors OHSL had in 1999?

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1 Q. Under what circumstances does a  
 2 public company restate its financials?  
 3 MS. ROWE: Objection.  
 4 MR. FISCHER: Objection.  
 5 MR. BUCKLEY: Objection.  
 6 A. Again, this is an accounting  
 7 question that I'm not an expert in. I don't  
 8 have any knowledge of accounting standards of  
 9 when restatements are required and when they  
 10 are not.  
 11 Q. Why do you say that that's an  
 12 accounting question?  
 13 A. My understanding of your question  
 14 was, when is a restatement of financials  
 15 required. What does it imply.  
 16 Q. And you don't believe that there  
 17 is any legal components to that question?  
 18 A. There may be general requirements  
 19 regarding SEC filings, but I don't practice in  
 20 the area of securities so I don't know what the  
 21 threshold standards are to restate or not  
 22 restate accounting information.  
 23 Q. Okay. Are you familiar with the  
 24 word unanimous?  
 25 A. Yes.

1 A. I don't know who at KMK would know  
 2 the number of directors of OHSL in 1999.  
 3 Q. Who was the attorney at KMK who  
 4 was most responsible for liaising with the  
 5 Dinsmore firm?  
 6 MR. FISCHER: Objection.  
 7 A. I don't know of any attorney at  
 8 KMK that was most responsible for liaison with  
 9 Dinsmore.  
 10 Q. Okay. Which attorneys worked with  
 11 Dinsmore on the merger?  
 12 A. My recollection is that Tim  
 13 Matthews worked with the Dinsmore attorneys in  
 14 the negotiation of the merger agreement.  
 15 Beyond that, I don't have any specific  
 16 knowledge of any specific contact between --  
 17 that was or was not made between KMK attorneys  
 18 and Dinsmore attorneys.  
 19 Q. How did documents get exchanged  
 20 between KMK and Dinsmore?  
 21 MS. ROWE: Objection.  
 22 A. With respect to documents I did  
 23 not provide to Dinsmore, I don't know.  
 24 Documents I was involved with could have been  
 25 sent via letter, via fax, via e-mail

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1 transmission.  
 2 Q. So you received faxes and e-mails  
 3 from Dinsmore; is that correct?  
 4 MS. ROWE: Objection.  
 5 MR. FISCHER: Objection. That  
 6 wasn't his testimony.  
 7 A. I don't have any specific  
 8 recollection of any particular fax or document  
 9 or e-mail with regard to this transaction from  
 10 Dinsmore. As a general statement, in this type  
 11 of transaction those would be the methods of  
 12 transmitting documents.  
 13 Q. Okay. Where are these documents  
 14 today?  
 15 A. Which documents?  
 16 Q. Documents that you may have  
 17 received from Dinsmore or others and/or sent to  
 18 Dinsmore or others?  
 19 A. I don't know.  
 20 Q. Do you believe that they're within  
 21 the custody and control of KMK?  
 22 A. I don't know.  
 23 Q. Where were they when you last saw  
 24 them?  
 25 A. I don't recall specifically the

1 questions.  
 2 A. Yes. I can read the sentence and  
 3 from reading the sentence have a basis of what  
 4 the sentence is trying to convey.  
 5 Q. Okay. And do you believe that  
 6 that sentence is trying to convey that the  
 7 entire OHSL Board unanimously voted as  
 8 directors to approve the acquisition, and also  
 9 unanimously believes that the transaction is in  
 10 the best interest of OHSL stockholders?  
 11 MR. FISCHER: Objection.  
 12 MS. ROWE: Objection.  
 13 A. The sentence is what it is, Your  
 14 Board of Directors unanimously approved the  
 15 acquisition and believes it is in the best  
 16 interest of OHSL stockholders, period. Beyond  
 17 that, I don't have any opinion or  
 18 interpretation of the sentence.  
 19 Q. Okay. And when you interpret it  
 20 in the way you just did, that would refer to  
 21 the entire Board of Directors, correct?  
 22 MS. ROWE: Objection.  
 23 MR. FISCHER: Objection.  
 24 MR. BUCKLEY: Objection.  
 25 A. I'm not sure what you mean by

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1 final positioning of the documents in this  
 2 transaction. Normal course would have been  
 3 that they would have been put in the read well  
 4 files, labeled with this matter and would have  
 5 been sent to the files.  
 6 Q. Okay. So at some point you  
 7 maintained a read well file, you put the  
 8 documents in it. And then at some point after  
 9 that, they were sent off to the files and  
 10 that's the last you've seen of them, correct?  
 11 MR. FISCHER: Objection.  
 12 MS. ROWE: Objection.  
 13 A. I don't have a specific  
 14 recollection of this transaction, but for  
 15 transactions in general, that would be the  
 16 procedure. I don't recall anything unusual or  
 17 different about this transaction.  
 18 Q. Okay. Getting back to this  
 19 sentence here, Your Board of Directors  
 20 unanimously approved the acquisition and  
 21 believes that it is in the best interest of  
 22 OHSL stockholders. Are you able to interpret  
 23 that sentence? You have an understanding of  
 24 what that sentence means, correct?  
 25 MR. FISCHER: Objection. Three

1 "entire."  
 2 Q. All.  
 3 MR. FISCHER: Same objection.  
 4 MS. ROWE: Objection, if there's a  
 5 question pending.  
 6 MR. FISCHER: There isn't, but --  
 7 A. Again, I think the sentence says  
 8 what the sentence says.  
 9 Q. Okay. And you believe that that  
 10 sentence connotes no opposition to the  
 11 transaction whatsoever, correct?  
 12 MS. ROWE: Objection.  
 13 MR. FISCHER: Objection.  
 14 A. I don't have any feeling or  
 15 connotation about what the sentence does or  
 16 does not imply beyond what it says.  
 17 Q. Okay. Let's look at the next  
 18 sentence, The Board unanimously recommends and  
 19 advises that you approve the acquisition at the  
 20 special meeting so that the transaction may be  
 21 completed. Do you see that?  
 22 A. Yes.  
 23 Q. Did I read that correctly?  
 24 A. Yes.  
 25 Q. From reading that sentence, would

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1 it be fair to infer that all of the Board  
2 members would vote their shares in favor of the  
3 merger transaction?

4 MS. ROWE: Objection.

5 MR. FISCHER: Objection.

6 MR. BUCKLEY: Objection.

7 A. I don't have any opinion or answer  
8 as to whether it's fair to infer beyond what  
9 the sentence says. It says, The Board  
10 unanimously recommends and advises that you  
11 approve the acquisition at the special meeting  
12 so that the transaction may be contemplated,  
13 period.

14 Q. Completed.

15 A. I'm sorry, you're correct,  
16 completed.

17 Q. So would it be fair to say that a  
18 logical extension of that sentence is that all  
19 of the OHSL directors voted their shares in  
20 favor of the merger? Correct?

21 MR. FISCHER: Objection.

22 MR. BUCKLEY: Objection.

23 MS. ROWE: Objection.

24 A. I don't have any, any reason what  
25 would be and what would not be a logical

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1 Q. Are you familiar with the term  
2 voting agreements as it's sometimes used by  
3 transactional attorneys?

4 A. As a general statement, yes.

5 Q. Okay. What do you understand  
6 voting agreements to be?

7 A. As a general statement, voting  
8 agreements are agreements between some or all  
9 of the shareholders of a company agreeing to  
10 vote their shares in a certain way.

11 Q. Did this transaction include  
12 voting agreements with any members of OHSL's  
13 management and/or Board?

14 A. I don't know.

15 Q. Were there attempts made to get  
16 OHSL's management and/or Board to sign voting  
17 agreements?

18 A. I don't know.

19 Q. Are voting agreements common in  
20 the mergers and acquisitions business?

21 MR. FISCHER: Objection.

22 MS. ROWE: Objection.

23 A. I don't have a definitive answer  
24 whether they are common or uncommon. They may  
25 be a part of a particular transaction, they may

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1 extension from that sentence. The sentence is  
2 what it is.

3 Q. Well, the sentence is giving  
4 investment advice from the OHSL Board to the  
5 OHSL shareholders, correct?

6 MR. FISCHER: Objection.

7 MS. ROWE: Objection.

8 A. I don't know that that sentence is  
9 giving investment advice to shareholders.

10 Q. Well, it's making a recommendation  
11 as to how they vote on the transaction,  
12 correct?

13 A. The second sentence in the  
14 paragraph you referenced says, Advises you to  
15 approve the action, which is, I guess, at the  
16 special meeting, so that the transaction may be  
17 completed.

18 Q. Okay. Would it surprise you if  
19 Ken Hanauer, the CEO and Board member of OHSL,  
20 did not follow the advice that he's telling  
21 others to follow in this sentence?

22 MR. FISCHER: Objection.

23 MR. BUCKLEY: Objection.

24 A. I have no reason to be surprised  
25 or not surprised.

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1 not be a part of another transaction. I think  
2 they're unique to the circumstances of the  
3 transaction.

4 Q. What's the purposes of voting  
5 agreements?

6 MS. ROWE: Objection.

7 MR. FISCHER: Objection.

8 A. Voting agreements can have  
9 different meanings and different purposes,  
10 depending upon context.

11 Q. Okay. What are some of the  
12 meanings and some of the purposes?

13 A. Shareholder -- I'm sorry,  
14 shareholder voting agreements can arise in as  
15 many hypothetical situations as you can imagine  
16 with a company, depending on what the  
17 circumstances and situations are of the  
18 company, whether it's a large or small company.

19 There are numerous, numerous  
20 examples and ways they could be appropriate for  
21 a certain company in certain circumstances.  
22 I'm not sure voting agreements have any  
23 general, general use. I think they're unique  
24 to the circumstances that they're implemented.

25 They're unique to the shareholders



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1 and to what the shareholders are trying to  
2 accomplish, meaning contracts. There is not a  
3 general definition of what a contract does or  
4 doesn't do. It's uniquely created for a  
5 specific purpose. By analogy, I think that's  
6 what voting agreements are used for.

7 Q. Well, in the context of mergers  
8 and acquisitions, aren't voting agreements  
9 sometimes used to lock in members of the Board  
10 and members of management to vote in a certain  
11 way?

12 A. I'm not sure I understand your  
13 term "lock in." Voting agreements generically  
14 can be used to establish the positions of  
15 different shareholders during or prior to a  
16 merger transaction.

17 Q. And in this particular merger  
18 transaction, the amount of shares owned by  
19 insiders was disclosed to the investing public  
20 in this document, correct?

21 MS. ROWE: Objection.

22 MR. FISCHER: Object.

23 A. I don't know that.

24 Q. Could you please take a look at  
25 page 63 of that document?

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1 MS. ROWE: Objection.

2 MR. FISCHER: Same objection.

3 A. As a general statement, it means  
4 to either be the actual named owner or to be  
5 entitled to receive tangible or intangible  
6 benefits of a stock ownership, say through a  
7 trust arrangement.

8 Q. Why is this table included in the  
9 proxy material?

10 MS. ROWE: Objection.

11 MR. FISCHER: Objection.

12 A. I'll go back to the statements I  
13 have made before. I'm not a securities lawyer, I  
14 don't practice in this area of the law. I  
15 don't know their specific requirements for  
16 proxy statements, why or why not this  
17 particular type of table would be included in a  
18 proxy statement.

19 Q. Now, you've said repeatedly you're  
20 not a securities lawyer and you don't practice  
21 in this area of the law. What do you mean when  
22 you say you're not a securities lawyer?

23 MS. ROWE: Objection.

24 MR. FISCHER: Same objection,  
25 waste of time.

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1 MR. FISCHER: Defendant's Exhibit  
2 1?

3 Q. Yes. Mr. Winstead, have you ever  
4 seen this table before?

5 A. To my recollection, no.

6 Q. Okay. The table is entitled  
7 Security Ownership of Certain Beneficial Owners  
8 and Management. Do you see that?

9 A. Yes, I see that caption at the top  
10 of the page.

11 Q. Okay. Who created this table?

12 A. I don't know.

13 Q. Do you know what computer system  
14 it came off, the KMK computer system, the  
15 Dinsmore computer system, or some other  
16 computer system?

17 MR. FISCHER: Objection to form.

18 MS. ROWE: Objection.

19 A. I don't know.

20 Q. Do you know if this page was KMK's  
21 responsibility, Dinsmore's responsibility, or  
22 something else?

23 A. I don't know.

24 Q. What does it mean to be a  
25 beneficial owner of stock?

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1 A. Securities law is governed by a  
2 specific set of federal and state laws, rules  
3 and regulations. It's a very specialized  
4 knowledge. Very specialized requirements.  
5 When I say I don't practice in securities law,  
6 I don't have a working or detailed knowledge of  
7 that law, those rules, those regulations. I  
8 don't prepare these kinds of documents.

9 Q. How do you describe yourself as an  
10 attorney?

11 MS. ROWE: Objection.

12 MR. FISCHER: Objection.

13 A. Could you be more specific?

14 MR. FISCHER: Are you speaking  
15 metaphysically?

16 Q. No, I'm not. You say you're not a  
17 securities lawyer. Would you call yourself a  
18 corporate lawyer? Would you call yourself a  
19 litigator? How would you describe yourself as  
20 an attorney?

21 MR. FISCHER: Same objection.

22 MS. ROWE: Same objection.

23 A. I would describe myself as a  
24 corporate associate with a general corporate  
25 practice.

37 (Pages 142 to 145)

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1 Q. What does the general corporate  
2 practice include?

3 A. Includes the asset based lending  
4 transactions, mergers and acquisitions,  
5 organization of entities, review and drafting  
6 of contracts.

7 Q. Okay. You testified that mergers  
8 and acquisitions are within your practice; is  
9 that correct?

10 A. As a general statement, yes.

11 Q. And mergers and acquisitions have  
12 a securities component, correct?

13 MR. FISCHER: Objection.

14 MS. ROWE: Objection.

15 A. Not all mergers and acquisitions  
16 have a securities component.

17 Q. Okay. This merger and acquisition  
18 had a securities component, correct?

19 A. Yes.

20 Q. And this merger and acquisition  
21 required you as an attorney working on the  
22 transaction to be familiar with certain  
23 securities terms, correct?

24 MS. ROWE: Objection.

25 MR. FISCHER: Objection.

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1 A. I don't have any recollection of  
2 any specific securities terms I was required to  
3 be familiar with when working on this  
4 transaction.

5 Q. Okay. Do you believe that you  
6 were required to be familiar with the  
7 Securities Act of 1933?

8 A. For this transaction --

9 MR. FISCHER: Objection.

10 A. -- no.

11 Q. Okay. How about in general as  
12 someone with a merger and acquisition practice?

13 MS. ROWE: Objection.

14 MR. FISCHER: Same objection.

15 A. I would repeat that the practice  
16 of securities law, '33 Act, '34 Act, is a  
17 specialized area of the law that beyond a  
18 superficial knowledge of securities law,  
19 involves practice by specific practitioners --  
20 specialized practitioners.

21 Q. Okay. Do you have an  
22 understanding of the Securities Act of 1933?

23 MS. ROWE: Objection.

24 MR. FISCHER: Object.

25 A. Only to a general and rather

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1 superficial extent.

2 Q. Okay. What is your understanding  
3 of the Securities Act of 1933?

4 MR. FISCHER: Objection.

5 MS. ROWE: Objection.

6 MR. FISCHER: Total waste of time.

7 A. Securities Act -- I'm sorry, the  
8 Securities Act of 1933 relates to certain  
9 public disclosures that are required of  
10 publicly-traded companies. There is an entire  
11 body of law that's based upon and relates to  
12 what those disclosures are, how and when they  
13 should be made. It is a very complicated,  
14 involved area of the law with many subsets of  
15 requirements and knowledge.

16 Q. Okay. Out of all the KMK  
17 attorneys working on this merger and  
18 acquisition, who was the person most  
19 knowledgeable about the Securities Act of 1933?

20 MS. ROWE: Objection.

21 MR. FISCHER: Objection.

22 A. I don't know.

23 Q. Okay. Is there any attorney at  
24 KMK who worked on this merger who you consider  
25 to be a securities lawyer?

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1 A. Yes.

2 Q. Who?

3 A. My understanding was that Mark  
4 Weiss and Mark Reuter worked on this  
5 transaction. My understanding is that Mr.  
6 Weiss and Mr. Reuter both practice in the  
7 securities law area. I don't have any specific  
8 knowledge or opinion as to the degree to which  
9 they practice in securities law beyond the fact  
10 that -- beyond a general understanding that  
11 they do practice in that area. I don't know  
12 their specific background or levels of  
13 knowledge with respect to any particular sub  
14 area of securities law.

15 Q. Okay. Do you believe that Mark  
16 Weiss is an expert in the field of securities  
17 law?

18 MR. FISCHER: Objection.

19 MS. ROWE: Objection.

20 MR. BUCKLEY: Objection.

21 A. I don't know what you mean by  
22 "expert."

23 Q. I thought we covered that this  
24 morning.

25 MS. ROWE: Objection. Is there a

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1 question?

2 MR. FISCHER: Same objection.

3 Q. Is that your answer? That's the  
4 best you can do?

5 A. I think my answer earlier was --  
6 with regard to expert is I don't know what an  
7 expert is.

8 Q. Okay.

9 A. With respect to --

10 Q. If Mark Weiss were called as a  
11 witness in an unrelated case and he went to  
12 federal court and raised his right hand and  
13 swore to tell the truth, do you think he would  
14 be recognized as an expert in the field of  
15 securities law?

16 MR. FISCHER: Objection.

17 MS. ROWE: Objection. Calls for a  
18 legal conclusion.

19 MR. FISCHER: Calling for ruling  
20 by a judge.

21 A. In your earlier expert -- or your  
22 earlier question to me, previous questions and  
23 answers was, did I consider myself an expert, I  
24 said only practicing five years, I did not  
25 consider myself an expert.

1 1933. Part of the '33 -- I believe the '33 Act  
2 may involve the sale and registration of  
3 companies in a public market.

4 Certain rules and regulations  
5 regarding disclosures that must be made,  
6 documents that must be provided. I believe the  
7 '34 Act goes more to once a company is sold --  
8 once the shares of a company are sold on a  
9 public market, that there are certain rules and  
10 regulations regarding periodic disclosures.

11 I believe the '34 Act also  
12 encompasses certain regulation of securities  
13 market, requirements for securities dealers,  
14 registration and licensing requirements for  
15 securities dealers. So I believe some of the  
16 answer I gave regarding what the '33 Act was  
17 previously is actually the '34 Act.

18 Q. And you work with both of these  
19 Acts to a certain extent in your corporate  
20 practice, correct?

21 MR. FISCHER: Objection.

22 MS. ROWE: Objection.

23 A. Only to a very limited extent.

24 Q. Do you understand the history of  
25 the Securities Act, both the '33 and '34?

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1 With respect to Mr. Weiss, I don't  
2 know exactly how long he's practiced securities  
3 law. I don't know what the threshold would be  
4 for the determination of whether he is an  
5 expert or not an expert in securities law.

6 Q. Okay. How about Mr. Reuter?

7 A. I would give the same answer.

8 MR. FISCHER: Same objection.

9 A. Regarding Mr. Reuter, I don't know  
10 the extent or length of his practice in the  
11 securities law.

12 Q. Do you believe that Mr. Weiss or  
13 Mr. Reuter hold themselves out as experts in  
14 the field of securities law?

15 A. I don't know.

16 Q. Are you familiar with the  
17 Securities Act of 1934?

18 MS. ROWE: Objection.

19 A. Only in a very general sense.

20 Q. Okay. What is your sense of the  
21 Securities Act of 1934?

22 A. '34 Act is related to disclosures  
23 that public companies are required to make. I  
24 may have misspoke before when I answered your  
25 previous question about the Securities Act of

1 A. Only to a very general extent.

2 MS. ROWE: Objection to relevance.

3 MR. FISCHER: Objection. Waste of  
4 time.

5 Q. What is your understanding?

6 A. The Securities Acts of 1933 and  
7 '34 were early legislative efforts of the New  
8 Deal in response to, obviously, the impact of  
9 the Great Depression, public opinion regarding  
10 the need for regulation of certain aspects of  
11 the public market for securities -- for  
12 securities buying and selling.

13 Q. And do you believe these Acts came  
14 about due to a perceived need to protect the  
15 public?

16 MS. ROWE: Objection.

17 MR. FISCHER: Objection.

18 A. Again, I'm not an expert on or  
19 particularly knowledgeable about the origins or  
20 history of the Securities Act of 1933 or of  
21 1934.

22 Q. Do you think they fall under the  
23 general rubric of investor protection?

24 A. My understanding in the aspects of  
25 both as Acts falls under the general rubric of

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1 investor protection.

2 Q. And in order to comply with the  
3 Securities Acts of '33 and '34, don't you have  
4 to have a working knowledge of certain terms  
5 such as materiality?

6 MR. FISCHER: Objection.

7 MS. ROWE: Objection.

8 A. I don't know that.

9 Q. Okay.

10 MS. ROWE: Mike, is now a good  
11 time to take a break? We've been going for  
12 another hour.

13 MR. BRAUTIGAM: Sure, that's fine.

14 (Brief recess.)

15 BY MR. BRAUTIGAM:

16 Q. Can I have the last question and  
17 answer read back, please?

18 (Record read by Reporter.)

19 Q. Well, Mr. Winstead, in creating a  
20 proxy material and registration statement, you  
21 would agree with me, would you not, that  
22 certain decisions have to be made as to what to  
23 include in the document and what not to include  
24 in the document? Correct?

25 A. Yes. At a general statement, some

1 Q. Okay. Who made that decision for  
2 KMK?

3 MR. FISCHER: Objection.

4 MS. ROWE: Objection.

5 A. With respect to the proxy  
6 statement marked as Defendant's Exhibit Number  
7 1, I don't know.

8 Q. Who did you work for on this  
9 transaction?

10 MR. FISCHER: Objection. We  
11 already went through this.

12 A. My recollection is the attorney  
13 that requested that I work on this transaction  
14 was Tim Matthews.

15 Q. Did you work closely with Mark  
16 Reuter and Mark Weiss?

17 A. My recollection is being asked to  
18 prepare the paragraph summary of the  
19 transaction we discussed in previous testimony.  
20 I don't recall any other relationship or  
21 working with respect to this transaction with  
22 respect to Mr. Weiss and Mr. Reuter.

23 Q. Okay. Could you look at page  
24 three of Defendant's Exhibit 1, please? It's  
25 not the third page, but it is marked three at

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1 information goes in a proxy statement, some  
2 information does not go in a proxy statement.  
3 But I think that's true with any agreement or  
4 any document, obviously.

5 Q. Okay. And with respect to  
6 documents that get filed with the SEC and get  
7 sent to shareholders to solicit their votes,  
8 one would want to include material information  
9 and in some circumstances exclude immaterial  
10 information so as not to clutter the proxy  
11 materials, correct?

12 MS. ROWE: Objection.

13 MR. FISCHER: Objection.

14 MR. BUCKLEY: Objection.

15 A. Again, what goes into what is  
16 included, what is not included in securities  
17 material -- materials filed with the Securities  
18 & Exchange Commission, is a determination that  
19 attorneys in this area are specifically hired  
20 to make.

21 I don't practice in that area, I  
22 don't prepare these documents, so I don't have  
23 an answer as to what material or immaterial  
24 means in the context of proxy statements or  
25 other SEC type materials.

1 the bottom.

2 MS. ROWE: Would you have a copy  
3 for us to share maybe? Do you mind?

4 Q. No, not at all.

5 A. This page?

6 Q. Yes, that page.

7 A. Marked three.

8 Q. And at the top it says summary.  
9 Do you see that?

10 A. Yes.

11 Q. Okay. Did you write anything on  
12 that page?

13 A. I don't recall having drafted  
14 anything I'm reading on this page three.

15 Q. Okay. I believe the summary  
16 continues for the next two pages. Would you  
17 look at those, please?

18 A. Looking at pages four and five of  
19 the materials provided, I don't see any of the  
20 text that I recall having drafted.

21 Q. Okay. And do you know how this  
22 summary was created?

23 A. No.

24 Q. Do you know who wrote this  
25 summary?

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1 A. No.  
 2 Q. Do you know what computer the  
 3 summary came off?  
 4 A. No.  
 5 Q. Do you know who was responsible  
 6 for finalizing this summary?  
 7 MS. ROWE: Objection.  
 8 A. No, I do not.  
 9 Q. Do you know who was responsible  
 10 for finalizing the overall document?  
 11 MR. FISCHER: Objection.  
 12 A. No.  
 13 Q. Okay. Could you take a look at  
 14 the Plan of Merger and look through that and  
 15 see if you can find the specific sections that  
 16 you may have written?  
 17 A. With respect to the actual  
 18 Agreement and Plan of Merger?  
 19 Q. Yes.  
 20 MR. FISCHER: Annex A?  
 21 Q. Yes.  
 22 A. I did not draft any of the  
 23 provisions of the merger agreement.  
 24 Q. I thought earlier you had  
 25 testified that you did write something that was

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1 Q. So you don't know what the purpose  
 2 of an S-4 is?  
 3 MR. FISCHER: Objection.  
 4 A. No.  
 5 Q. Let's mark this as the next  
 6 exhibit.  
 7 (Plaintiff's Exhibit Number 42  
 8 was marked for identification.)  
 9 Q. Mr. Winstead, the court reporter  
 10 has handed you what has now been marked as  
 11 Plaintiff's Deposition Exhibit 42 and I ask you  
 12 to take a look at that.  
 13 MS. ROWE: Mike, this copy appears  
 14 to be missing a page, KMK 4025.  
 15 MR. FISCHER: Yes, and 23, if it  
 16 matters.  
 17 MR. BRAUTIGAM: 23?  
 18 MS. ROWE: 23 and 25.  
 19 MR. BRAUTIGAM: I have both of  
 20 them. Why don't I go make copies for you?  
 21 MR. MESH: Here, let me have it.  
 22 23 and 25?  
 23 MR. FISCHER: Yes, at the end or  
 24 near the end.  
 25 MR. MESH: Is that all?

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1 included in Annex A, but that's not correct?  
 2 MR. FISCHER: Objection. I don't  
 3 think that was his testimony.  
 4 A. My testimony or intended testimony  
 5 was that my recollection is that I prepared a  
 6 paragraph summary of some of the terms and  
 7 conditions of the Agreement and Plan of Merger  
 8 for use in preparation of the proxy. My  
 9 recollection is providing that to Mr. Reuter.  
 10 I don't recall any other  
 11 involvement in the preparation of the proxy  
 12 statement. My recollection is having no  
 13 involvement in the drafting of the Agreement  
 14 and Plan of Merger itself.  
 15 Q. Okay. Which terms did you  
 16 summarize?  
 17 A. As I said before, it was a very  
 18 general summary, which I recall being a  
 19 paragraph. I don't recall the specific content  
 20 of that paragraph, however.  
 21 Q. You don't recall any of the terms  
 22 within the paragraph, either?  
 23 A. No.  
 24 Q. What's an S-4?  
 25 A. I don't know.

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1 MR. FISCHER: Well, I don't know,  
 2 but that's all I could see.  
 3 A. Okay. I have taken a very  
 4 preliminary look at the document.  
 5 Q. Have you seen that document  
 6 before?  
 7 A. No.  
 8 Q. Okay. Have you seen the  
 9 distribution list on the second and third pages  
 10 before?  
 11 MS. ROWE: Objection.  
 12 A. To my recollection, no.  
 13 Q. Okay. But you're aware that  
 14 distribution list exists when you're creating  
 15 documents having to do with the merger and  
 16 acquisition, correct?  
 17 MS. ROWE: Objection.  
 18 MR. FISCHER: Objection.  
 19 A. As a general statement,  
 20 distribution lists are not uncommon.  
 21 Q. Okay. What's the purpose of a  
 22 distribution list?  
 23 MS. ROWE: Objection.  
 24 MR. FISCHER: Waste of time.  
 25 A. Distribution list is an attachment



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1 to a letter simply allowing numerous parties to  
2 be included on distribution of a document.

3 Q. Okay. And what's the purpose of  
4 including numerous parties on distribution of a  
5 document in the merger and acquisitions  
6 context?

7 MS. ROWE: Objection.

8 MR. FISCHER: Same objection.

9 A. Those parties have some interest  
10 or some curiosity in seeing the document that's  
11 being distributed.

12 Q. Okay. And I see Mr. Chris Carey  
13 is on the distribution list. What, if  
14 anything, did you expect him to do upon receipt  
15 of this document?

16 MR. FISCHER: Objection. He  
17 didn't send the document --

18 MS. ROWE: Objection.

19 MR. FISCHER: -- so I don't know  
20 how he could know what he would be expected to  
21 do.

22 A. I don't know -- have any specific  
23 information what Mr. Carey would do with  
24 respect to this draft document.

25 Q. Okay. Well, do you think it's

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1 Q. So if the people react to the  
2 document in a way consistent with Mr. Weiss'  
3 instruction, you would expect them to make  
4 comments, changes, corrections, things like  
5 that, and get it back to Mr. Weiss, correct?

6 MS. ROWE: Objection.

7 MR. BUCKLEY: Objection.

8 MR. FISCHER: Objection.

9 A. Again, I don't have any specific  
10 knowledge as to what any party on the  
11 distribution list would or would not do.  
12 Whether these were simply courtesy copies,  
13 whether there was specific involvement in any  
14 of these parties in the document, I just don't  
15 know what -- why these parties are on this  
16 distribution list, why this document was  
17 distributed to those specific individuals. I  
18 just have no knowledge.

19 Q. Do you see the Bates number in the  
20 lower right?

21 A. This number?

22 Q. Ending 60?

23 A. KMK 03960?

24 Q. Right.

25 A. Yes.

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1 reasonable for him to look the draft over and  
2 make any changes or directions?

3 MS. ROWE: I'm going to object.  
4 And to the extent that it calls for  
5 attorney-client information between KMK and  
6 Provident, Provident asserts the privilege. Go  
7 ahead.

8 A. I don't have any opinion as to  
9 what Mr. Carey in his role would do with a  
10 draft of this document.

11 Q. Well, if he saw something that was  
12 inaccurate, you would expect him to bring it to  
13 Mr. Weiss' attention, correct?

14 MR. FISCHER: Objection.

15 MS. ROWE: Objection.

16 A. Again, I would only be guessing as  
17 to what Mr. Carey would do in the event he did  
18 or did not see any inaccuracy in any particular  
19 document, what his procedure would be, who he  
20 would call, what actions he would take.

21 Q. Well, Mr. Weiss' letter says, We  
22 would appreciate receiving your comments to the  
23 form S-4 by Friday, August 20th. Do you see  
24 that?

25 A. Yes, I see that.

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1 Q. And does the fact that this has a  
2 prefix KMK indicate to you that it came from  
3 the files and records of the law firm of  
4 Keating, Muething & Klekamp PLL?

5 A. I'm not aware of how documentation  
6 for litigation purposes is correlated and  
7 stamped. That seems a logical statement on  
8 your part, but I don't know that to be a fact.

9 Q. Okay. Does it appear to you from  
10 reading this document that Mark Weiss is in  
11 charge of finalizing the S-4?

12 MS. ROWE: Objection.

13 MR. FISCHER: Objection.

14 A. Do you mean reading this cover  
15 letter or the entire document?

16 Q. The cover letter.

17 A. Based on the two paragraphs of  
18 this cover letter -- really two sentences -- I  
19 don't have any basis to say whether or --  
20 whether or not Mr. Weiss is in charge of  
21 finalizing completion of the document.

22 Q. Okay. With respect to Defendant's  
23 Exhibit I, the overall document, okay, could  
24 you estimate what role KMK had in the  
25 production and completion and finalizing of the

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1 document vis-a-vis the Dinsmore firm? For  
2 example, was KMK 50 percent responsible, 80  
3 percent?

4 MR. FISCHER: Objection.

5 MS. ROWE: Objection.

6 MR. BUCKLEY: Objection.

7 A. I have no knowledge beyond what  
8 I've testified earlier about the preparation of  
9 the proxy statement or whose involvement was  
10 required or the extent of any one or more  
11 parties' involvement.

12 Q. Okay. Now, looking at the  
13 distribution list on the other document --

14 MR. FISCHER: Are we talking about  
15 on Exhibit 42?

16 Q. Yes.

17 A. Okay.

18 Q. Okay. It lists two attorneys for  
19 Dinsmore; is that correct?

20 A. On the second page of the  
21 distribution list I see two attorneys listed  
22 under the heading Dinsmore & Shohl.

23 Q. And how many attorneys are listed  
24 under the KMK firm?

25 A. I see five attorneys listed under

1 Q. Okay. And then Mark Weiss is the  
2 next most senior person; is that right?

3 A. To my knowledge, that's correct.

4 Q. So Mark Reuter would be the most  
5 junior person on this service list?

6 A. Yes.

7 Q. Okay. What was Mr. Kreider's role  
8 as you understood it with respect to the  
9 overall merger and acquisition?

10 MR. FISCHER: Objection.

11 MS. ROWE: Objection.

12 A. I don't know.

13 Q. Okay. What was Mr. Rosenberg's  
14 role with respect to the overall merger and  
15 acquisition?

16 MS. ROWE: Objection.

17 MR. FISCHER: Objection.

18 A. I don't know.

19 Q. What was Mr. Matthews' role with  
20 respect to the overall merger and acquisition?

21 MR. FISCHER: Same objection.

22 A. My understanding is Mr. Matthews  
23 was working on the Agreement and Plan of  
24 Merger.

25 Q. And aside from you, whose name

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1 the KMK heading.

2 Q. Okay. Who is the most senior  
3 attorney of those five?

4 A. By senior, do you mean the person  
5 who's been at the firm the longest?

6 Q. Yes.

7 A. I believe Mr. Gary Kreider has  
8 been at the firm the longest of those attorneys  
9 listed.

10 Q. Do you believe that he was in  
11 charge of or had the most responsibility for  
12 this M&A?

13 A. I don't know.

14 MS. ROWE: Objection.

15 Q. Okay. How about J. David  
16 Rosenberg? How long has he been with the firm?

17 A. I don't know particulars. I  
18 believe since the early seventies.

19 Q. Okay. Was he next in order of  
20 seniority?

21 A. To my knowledge, that's correct.

22 Q. And I believe Mr. Matthews has  
23 been a partner with KMK since 1987; is that  
24 correct?

25 A. To my knowledge, that's correct.

1 does not appear on the service list, were there  
2 any other KMK attorneys who worked with you  
3 under Mr. Matthews or anyone else who performed  
4 work on this transaction?

5 MR. FISCHER: Objection to form.

6 A. I don't recall any other attorneys  
7 working with me and Mr. Matthews on this  
8 transaction.

9 Q. Okay. Do you recall any other  
10 attorneys working on the transaction, even if  
11 they didn't work with you or Mr. Matthews, who  
12 are not listed here?

13 A. Based on what I remember from  
14 those dates, I don't recall any other attorneys  
15 working on this -- on this matter. That  
16 doesn't mean other attorneys may not have had a  
17 role, I just don't remember working with any  
18 other attorneys on this transaction.

19 Q. But that would be reflected in the  
20 billing records of KMK, correct?

21 A. It would be my assumption that if  
22 another attorney had worked on this  
23 transaction, they would have billed their time  
24 and that would be reflected in the normal  
25 course of billing records.

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1 Q. Roughly how many hours did you  
2 bill in this merger and acquisition?  
3 A. I don't recall --  
4 MS. ROWE: Objection to relevance,  
5 I don't recall.  
6 MR. FISCHER: Objection.  
7 MS. ROWE: Sorry, go ahead.  
8 Q. Order of magnitude, 50, a hundred?  
9 MR. FISCHER: Objection.  
10 MS. ROWE: Same objection.  
11 A. Again, I don't recall specifics.  
12 Order of magnitude would be more or less a  
13 guess. More than 25. More than 50.  
14 Q. More than 50?  
15 A. As -- as I said, I don't recall  
16 how many hours I billed in this transaction.  
17 Q. Okay. But you think it's likely  
18 to be more than 50, correct?  
19 MS. ROWE: Objection.  
20 MR. FISCHER: Objection.  
21 A. No. As a general statement, in  
22 the range of 50 would seem reasonable.  
23 However, I don't recall the number of hours I  
24 worked on this transaction.  
25 Q. Okay. Now, aside from writing

1 Mr. Reuter. However, I don't have any specific  
2 recollection of any specific conversations with  
3 Mr. Reuter or anyone else regarding preparation  
4 of the document.  
5 Q. How long did it take you to write  
6 your portion of the summary of the merger  
7 agreement?  
8 A. I don't recall.  
9 Q. More than an hour?  
10 A. I don't recall.  
11 Q. Okay. But the mystery of how you  
12 spent your time would be solved by the  
13 production of your billing records, correct?  
14 MR. FISCHER: Objection.  
15 MS. ROWE: Objection.  
16 A. I think we discussed before the  
17 billing records would normally indicate the  
18 day-to-day activities on any particular  
19 transaction. I have no recollection of why the  
20 billing records for this transaction would be  
21 any different.  
22 Q. Where did you get the underlying  
23 information that you used to write your  
24 summary?  
25 MR. FISCHER: To the extent that

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1 this one-third to one-half page paragraph, what  
2 else did you do that encompassed the  
3 approximately 50 hours that you worked on this  
4 transaction?  
5 A. I don't recall specific documents  
6 and specific tasking I was requested beyond I  
7 do recall the summary of merger agreement that  
8 we had discussed before. I don't have specific  
9 recollections of any other documents or matters  
10 that I attended to in working on this  
11 transaction.  
12 Q. Who, if anyone, did you consult  
13 with as you were writing this summary of merger  
14 agreement?  
15 MS. ROWE: Objection. To the  
16 extent that it calls for revealing  
17 attorney-client information between KMK and  
18 Provident, Provident asserts the privilege.  
19 MR. FISCHER: You can tell him --  
20 I think his question was whom. You can discuss  
21 with whom you spoke, but you can't discuss what  
22 you discussed. Subject to those objections.  
23 A. As I stated before, the only  
24 recollection I have with respect to this  
25 specific document is providing the document to

1 you got it from documents and things, you can  
2 disclose that. To the extent it's from  
3 communications with clients or from  
4 conversations with the lawyers at KMK, don't  
5 disclose that.  
6 A. To the best of my recollection,  
7 that information came from the Agreement and  
8 Plan of Merger.  
9 Q. And where did that come from, KM?  
10 MR. FISCHER: Same instruction.  
11 A. I don't recall what -- how  
12 physically -- what source, whether it was off a  
13 computer source, whether it was a hard copy of  
14 a signed copy of the merger agreement. I  
15 simply don't recall what form of -- form of the  
16 agreement I used.  
17 Q. Did you ever talk to anyone at  
18 Dinsmore during your work on this merger?  
19 A. Yes.  
20 Q. With whom did you speak?  
21 A. I recall a telephone conversation  
22 with Cliff Roe.  
23 Q. Okay. What did you say to Mr. Roe  
24 and what did he say to you?  
25 A. I don't recall.

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1 Q. What was the general subject  
2 matter of the conversation?  
3 A. I don't recall.  
4 Q. Who did Mr. Roe represent in the  
5 merger?  
6 A. I understood Mr. Roe represented  
7 Oak Hills.  
8 Q. Do you further understand that he  
9 represented the Oak Hills directors or Oak  
10 Hills as an entity or OHSL? Could you be more  
11 specific?  
12 MR. FISCHER: Objection to form.  
13 MR. BUCKLEY: Objection.  
14 MS. ROWE: Objection.  
15 A. I don't know the technical extent  
16 and the specific, quote, unquote, Oak Hill  
17 parties that Mr. Roe represented.  
18 Q. When did you have this  
19 conversation with Mr. Roe?  
20 A. I don't recall.  
21 Q. Did you call him or did he call  
22 you?  
23 A. I don't remember.  
24 Q. Did you ever talk to anyone at  
25 OHSL?

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1 acquisition transactions?  
2 MR. FISCHER: Objection.  
3 MR. BUCKLEY: Objection.  
4 MS. ROWE: Objection.  
5 A. My answer is that it would depend  
6 on the circumstances of the particular merger  
7 transaction, the extent and what Board minutes  
8 would be reviewed.  
9 Q. Isn't it routine that the buyer  
10 typically reviews the seller's Board minutes  
11 and major committee minutes for the last five  
12 years or so?  
13 MR. FISCHER: Objection.  
14 MS. ROWE: Objection.  
15 A. Repeat the question.  
16 (Record read by Reporter.)  
17 MS. ROWE: Objection.  
18 MR. FISCHER: Same objection.  
19 A. I'm not aware of any rule of thumb  
20 that in a major transaction committee and Board  
21 minutes are reviewed for the previous five  
22 years in an acquisition.  
23 Q. Are you familiar with the phrase  
24 due diligence?  
25 A. Yes.

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1 A. I don't recall ever speaking to  
2 anyone at OHSL directly.  
3 Q. Okay.  
4 A. However, I don't -- the answer is,  
5 I don't recall.  
6 Q. Did you have access to OHSL's  
7 Board minutes?  
8 A. I don't recall having access to  
9 OHSL's Board minutes.  
10 Q. When you say "having access to  
11 OHSL Board minutes," do you mean you personally  
12 or do you mean the KMK firm?  
13 MR. FISCHER: Objection.  
14 MS. ROWE: Objection.  
15 MR. FISCHER: He's answered your  
16 question word for word.  
17 A. Again, I don't have any  
18 recollection of having any access or having  
19 seen OHSL Board minutes.  
20 Q. Do you know if anyone at KMK was  
21 assigned to read OHSL's Board minutes and major  
22 committee minutes for let's say the last five  
23 years?  
24 A. No.  
25 Q. Is that common in merger and

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1 Q. Briefly describe your view of the  
2 due diligence obligations of the buyer in a  
3 merger and acquisition such as this.  
4 MR. FISCHER: Objection.  
5 A. The duties with respect to what  
6 due diligence is conducted in any particular  
7 transaction relate to the nature and  
8 circumstances of that transaction. Whether  
9 certain documents are reviewed or not reviewed  
10 depends on the intent of the parties ultimately  
11 as to the company being acquired. There are  
12 any number of factors that relate to the extent  
13 of due diligence. It can be very variable  
14 depending on the nature of the deal or the  
15 transaction.  
16 Q. Okay. What factors were  
17 considered in determining the nature of due  
18 diligence in this case?  
19 MR. FISCHER: Objection.  
20 MS. ROWE: Objection.  
21 A. I don't know.  
22 Q. Who would know?  
23 A. I don't know.  
24 Q. Do you think Timothy Reuter would  
25 be the -- excuse me, Timothy Matthews would be

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1 the person most knowledgeable with respect to  
2 the parameters of due diligence in this case?

3 MS. ROWE: Objection.

4 MR. FISCHER: Same objection.

5 A. I don't know that.

6 Q. Do you have an opinion on any of  
7 the KMK attorneys who might be most  
8 knowledgeable with respect to due diligence?

9 MR. FISCHER: Objection to form.

10 A. I don't know the extent of the  
11 knowledge of any of the KMK attorneys on this  
12 distribution list -- their role or knowledge  
13 regarding due diligence.

14 Q. From your approximately 50 hours  
15 working on the case, did you form an opinion as  
16 to who was in charge of the overall transaction  
17 from KMK's point of view?

18 MR. FISCHER: Same objection.

19 MR. BUCKLEY: Objection.

20 MS. ROWE: Objection.

21 MR. FISCHER: Asked about three  
22 times now.

23 A. And let me say again, I don't --  
24 my testimony here is not that I billed  
25 approximately 50 hours on this transaction.

1 Even as to the extent as regarding this  
2 transaction. I do recall having conversations  
3 with Mr. Magee in this time period.

4 MR. FISCHER: Again, don't  
5 disclose the content of those discussions,  
6 unless it was for social reasons.

7 A. And none of those conversations to  
8 my recollection were for social or other  
9 purposes -- casual purposes.

10 Q. Okay. Can I direct your attention  
11 to Exhibit 42, page five?

12 A. It would be the heading Summary?

13 Q. Right. And in the right-hand  
14 column, it says Reasons for the Acquisition.  
15 Do you see that?

16 A. Yes.

17 Q. And it says in brackets, To be  
18 provided by OHSL. Do you see that?

19 A. I see that on the page.

20 Q. Okay. Now, does that suggest to  
21 you that KMK has this document on its computer  
22 system and will receive this information from  
23 OHSL?

24 MS. ROWE: Objection.

25 MR. FISCHER: Objection.

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1 With regard to your question whether that was a  
2 correct order of magnitude, my answer is I  
3 believe that's in the correct magnitude, more  
4 than say five hours, but I'm not testifying  
5 here that I billed in the neighborhood of 50  
6 hours on this transaction.

7 I don't recall how much time I  
8 billed on this transaction. With respect to  
9 your question as to -- I'm not -- I don't know  
10 who was overall in charge of this transaction  
11 from the point of view of the law firm KMK.

12 Q. During the time you worked on the  
13 transaction, did you ever speak to anyone at  
14 Provident?

15 MR. FISCHER: Again, don't  
16 disclose what you discussed. He's asking the  
17 question, did you speak with anyone at  
18 Provident.

19 A. I recall that I may have had  
20 conversations with Mark Magee. However, I  
21 don't recall any specific conversations.

22 Q. When you spoke to Mr. Magee, were  
23 you providing him with legal advice?

24 A. Again, I don't recall the specific  
25 context of the conversation with Mark Magee.

1 A. The fact that this has in brackets  
2 To be provided by OHSL doesn't allow me -- give  
3 me enough basis to make an assumption as to  
4 whose computer system this document was on.

5 Q. Okay. This is a draft of an S-4,  
6 correct?

7 A. It appears to be a draft of an  
8 S-4.

9 Q. And the date is August 17th, 1999,  
10 correct?

11 A. I'm sorry, where are you seeing  
12 that date at?

13 Q. The next page.

14 A. Yes. The document in front of me  
15 says draft, dated August 17th, 1999.

16 Q. And it appears to have come from  
17 the books and records of KMK, correct?

18 A. The document you provided to me  
19 has a cover letter from Mark Weiss labeled re:  
20 form S-4. Attached is the draft form S-4.

21 Q. And the S-4 is a document that's  
22 known as a public document that is filed with  
23 the SEC, correct?

24 MS. ROWE: Objection.

25 MR. FISCHER: Objection.



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1 A. My understanding is that this  
2 document would be filed with the SEC.  
3 Q. And once it's filed with the SEC,  
4 it becomes a public document, correct?  
5 A. I'm not sure what you mean by the  
6 term "public document."  
7 Q. You don't know what a public  
8 document is in this context?  
9 A. In the context that it's available  
10 on the public record?  
11 Q. Yes.  
12 A. Yes. In that context I would  
13 understand this to be a public document.  
14 Q. Okay. Now, let's look at the  
15 Recommendation to Stockholders on page five of  
16 the draft S-4. Do you see that? It's right  
17 under the Reasons for the Acquisition.  
18 A. You said Recommendation to  
19 Stockholders?  
20 Q. Yes.  
21 A. Yes, I see that on the document in  
22 front of me.  
23 Q. Right. And that single sentence  
24 refers to the OHSL Board of Directors  
25 unanimously recommending that OHSL stockholders

1 Q. Was it important that information  
2 provided by OHSL's counsel be checked?  
3 MS. ROWE: Objection.  
4 MR. FISCHER: Objection.  
5 A. I don't recall any specific  
6 discussions or considerations regarding  
7 confirming the accuracy of information provided  
8 in this transaction.  
9 Q. That wasn't my question. Was it  
10 important that the information provided by OHSL  
11 and/or their counsel be checked for its  
12 truthfulness?  
13 MR. FISCHER: Objection.  
14 MS. ROWE: Objection.  
15 A. I'm sorry. I'm a little unclear  
16 as to -- you're asking was it important that  
17 the information be confirmed?  
18 Q. Well, yeah. My phrase was checked  
19 for its truthfulness, but yeah, that's the  
20 idea. And do you have an answer to that  
21 question?  
22 MR. FISCHER: Same objection.  
23 MS. ROWE: Same objection.  
24 A. Again, I don't know why there  
25 would be any particular reason to feel

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1 approve the merger, correct?  
2 A. The sentence under that heading  
3 says, The OHSL Board of Directors unanimously  
4 recommends that the OHSL stockholders approve  
5 and adopt the agreement at the special  
6 stockholders meeting so that the acquisition  
7 can be completed, period.  
8 Q. Where did the phrase "unanimously  
9 recommends" come from in that sentence?  
10 MR. FISCHER: Objection.  
11 MS. ROWE: Objection.  
12 A. I don't know.  
13 Q. Did KMK do anything to check the  
14 veracity of that statement?  
15 MS. ROWE: Objection.  
16 MR. FISCHER: Same objection.  
17 A. I don't know.  
18 Q. Do you have an opinion as to which  
19 KMK attorney was tasked with checking the  
20 veracity of information that came from OHSL?  
21 MR. FISCHER: Objection.  
22 A. I do not have knowledge or an  
23 opinion as to which attorney was checking the  
24 veracity of information provided by OHSL's  
25 counsel.

1 important -- or feel the information needed to  
2 be confirmed or not confirmed.  
3 Q. So as you sit here today, you  
4 don't believe that it was important to check  
5 the information that was provided by OHSL  
6 and/or their counsel?  
7 MR. FISCHER: Objection. That's  
8 not what he said.  
9 MS. ROWE: Objection. Misstates  
10 testimony.  
11 MR. FISCHER: Misstates testimony,  
12 and you're arguing with the witness.  
13 Q. Mr. Winstead, I don't want to  
14 misstate your testimony and I certainly don't  
15 mean to argue with you, so if I have misstated  
16 your testimony, please correct it at this time.  
17 MR. FISCHER: Objection. I  
18 don't -- I don't know what the question is.  
19 A. Again, I'm not trying to dance  
20 around your question, I just don't -- in the  
21 context of your asking me is it important to  
22 verify the information given, I need more  
23 specifics as to what information would be  
24 confirmed, what -- how that would be confirmed,  
25 the specific context. You're talking about if

47 (Pages 182 to 185)

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1 someone gave a fax number that was to be  
2 included in the document, would that -- would  
3 two attorneys check that. I don't know, it  
4 would depend on the circumstances. So I can't  
5 give you a general answer whether it was  
6 important to confirm the information provided.

7 Q. Okay. Let me see if I can back  
8 up. Defendant's Exhibit 1, the proxy materials  
9 and registration statement. I think we've  
10 established earlier that I believe it's a joint  
11 document and you're not sure, correct?

12 MR. FISCHER: Objection. It's  
13 irrelevant what you believe.

14 A. I recall my testimony was I don't  
15 know if that was a joint document.

16 Q. Okay. But you would agree with  
17 me, would you not, that the information  
18 contained in Defendant's Exhibit 1 came in part  
19 from Provident and came in part from OHSL  
20 and/or their counsel? Correct?

21 A. That would be my understanding as  
22 to how this document -- this type of document  
23 would be prepared.

24 Q. Right. And we talked earlier  
25 about whether the document should be truthful,

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1 MR. FISCHER: You don't --

2 THE WITNESS: -- you really want  
3 to go down that road or not.

4 MR. FISCHER: Don't discuss the  
5 names of other customers, clients. Do not  
6 discuss any specifics about the representation  
7 or communications with Provident. Do you need  
8 to confer on an issue of privilege to respond  
9 to that question? Don't discuss it out loud,  
10 but just tell me yes or no if it's a question  
11 of privilege. If it's not --

12 THE WITNESS: I just had a quick  
13 question.

14 MR. FISCHER: Okay.

15 MR. BRAUTIGAM: I'll leave the  
16 room.

17 (Brief recess.)

18 BY MR. BRAUTIGAM:

19 Q. Mr. Winstead, we took a short  
20 break from this deposition so you could confer  
21 with your counsel on the issue of privilege.  
22 Is that correct?

23 A. Yes.

24 Q. And do you have an answer for the  
25 question now?

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1 complete and accurate. You remember that  
2 testimony generally, correct?

3 MR. FISCHER: Objection.

4 A. I remember general questions and  
5 answers regarding materiality, truthfulness,  
6 completeness, yes.

7 Q. Okay. And Provident, because of  
8 its -- well, KMK, because of its continuing the  
9 ongoing relationship with Provident, knows a  
10 lot about Provident, correct?

11 MR. FISCHER: Objection.

12 MS. ROWE: Objection.

13 MR. FISCHER: Knows a lot?

14 A. Provident is a client of the bank.  
15 Obviously attorneys know a great deal about  
16 their clients.

17 Q. Right. And you probably have  
18 templates on your computer systems about  
19 Provident taking over smaller institutions  
20 because Provident has done that in the past  
21 couple of years, correct?

22 MS. ROWE: Objection.

23 MR. FISCHER: Objection.

24 THE WITNESS: Again, I don't know.  
25 if --

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1 MR. FISCHER: I'm instructing him  
2 not to answer that question.

3 MR. BRAUTIGAM: Okay. And the  
4 grounds?

5 MR. FISCHER: Privilege.

6 MR. BRAUTIGAM: What type of  
7 privilege?

8 MR. FISCHER: What type?  
9 Communications with clients.

10 MR. BRAUTIGAM: Okay. I have  
11 no --

12 MS. ROWE: I have the same  
13 instruction to the extent it calls for --

14 MR. FISCHER: And there's work  
15 product, both.

16 MS. ROWE: Yes. At least to the  
17 extent it calls for attorney-client information  
18 between KMK and Provident, then Provident  
19 asserts the privilege. To the extent that the  
20 question calls for information about other  
21 clients --

22 MR. FISCHER: I'm objecting to  
23 that.

24 MR. BRAUTIGAM: Just so we're  
25 clear, Mr. Fischer is objecting and instructing

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1 the witness not to answer on one basis and Ms.  
2 Rowe is instructing the witness not to answer  
3 on another basis?

4 MS. ROWE: No. I have no  
5 authority to instruct the witness not to  
6 answer. What I am doing is asserting  
7 attorney-client privilege on behalf of  
8 Provident. If I said instructing not to  
9 answer, I misspoke.

10 I simply am asserting  
11 attorney-client privilege on behalf of  
12 Provident to the extent that the question  
13 called for Mr. Winstead to reveal  
14 attorney-client information about Provident  
15 Bank.

16 BY MR. BRAUTIGAM:

17 Q. Mr. Winstead, during the time you  
18 conferred with Mr. Fischer, the other attorneys  
19 left the room; is that correct?

20 A. Yes.

21 Q. And that included Ms. Rowe; is  
22 that correct?

23 A. Yes.

24 Q. And did Ms. Rowe leave the room so  
25 as not to destroy the privilege that you claim

1 A. I don't know that to be the rule.

2 Q. Okay. What is your understanding  
3 of the attorney-client privilege?

4 MS. ROWE: Objection.

5 MR. FISCHER: Objection. Waste of  
6 time.

7 A. My understanding is a technical  
8 rule of which I'm not knowledgeable of specific  
9 -- for lack of a better term -- sub rules or  
10 subcategories of when the attorney-client  
11 privilege applies, what parties may or may not  
12 be present, the general ruling of most  
13 information communicated between an attorney  
14 and their clients is privileged, not subject to  
15 discovery.

16 Beyond that, I don't have  
17 specifics as to when or under any particular  
18 set of civil rules of procedure, what acts are  
19 required, what formalities are required, what  
20 mechanics are required to preserve or implement  
21 the attorney-client privilege.

22 Q. Well, don't you have to have more  
23 of an understanding than that in order to do  
24 your job as an attorney?

25 MR. FISCHER: Objection.

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1 to have with Mr. Fischer as your counsel?

2 MR. FISCHER: Objection.

3 MS. ROWE: Objection.

4 A. I don't know why Ms. Rowe left the  
5 room.

6 Q. Okay. Is that your impression  
7 that Ms. Rowe left the room for that reason?

8 MR. FISCHER: Objection.

9 A. I don't have any impression or  
10 information why Ms. Rowe would need to leave  
11 the room or not leave the room.

12 Q. Okay. Well, this gentleman left  
13 the room as well, representing the Dinsmore  
14 defendants, correct?

15 A. He left the room.

16 Q. Okay. And do you have any reason  
17 why he left the room?

18 A. I have no reason to know that --  
19 who needed to leave the room or who needed to  
20 stay in the room to preserve the  
21 attorney-client privilege.

22 Q. Well, as a general matter, isn't  
23 the attorney-client privilege destroyed by the  
24 presence of outsiders?

25 MR. FISCHER: Objection.

1 MS. ROWE: Objection.

2 A. I've never had to --

3 MR. FISCHER: Again, arguing with  
4 the witness. If this continues -- it needs to  
5 stop.

6 A. Beyond the general answer I gave  
7 you, I've not had a requirement in my practice  
8 to use or have available with knowledge of the  
9 attorney-client privilege.

10 Q. Mr. Winstead, do you think I was  
11 arguing with you earlier?

12 MR. FISCHER: Objection.

13 MS. ROWE: Objection.

14 A. What do you -- when was earlier?

15 Q. Do you think I was arguing with  
16 you at any time during your deposition?

17 MS. ROWE: Objection.

18 MR. FISCHER: Objection.

19 A. Yes.

20 Q. Okay. When?

21 MR. FISCHER: Objection. Arguing  
22 with the witness.

23 MS. ROWE: Same objection.

24 MR. FISCHER: Spending time  
25 arguing with the witness. Let's move on.

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1 A. My specific recollection of your  
2 arguing with me regarding certain questions, I  
3 believe you were trying to elicit a different  
4 answer or more information from me. I would  
5 have to review the transcript to pinpoint  
6 specific instances.

7 Q. Okay. We were talking earlier  
8 about how the proxy materials, registration  
9 statement was a joint document. Do you  
10 remember that?

11 MR. BUCKLEY: Objection.

12 MS. ROWE: Objection.

13 MR. FISCHER: Objection.

14 A. I remember a discussion regarding  
15 you considered it a joint document. My answer  
16 was that I did not know that it would be a  
17 joint document.

18 Q. Okay. And my question was then,  
19 how did you verify information from Provident?

20 MS. ROWE: Objection.

21 MR. FISCHER: Objection. Again,  
22 don't --

23 A. I don't understand that --

24 MR. FISCHER: -- disclose  
25 communications with the client.

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1 proxy statement or proxy statements in general,  
2 the information is collected, correlated and  
3 the final proxy statement produced. I don't  
4 know that with respect to the proxy statement  
5 in this matter or proxy statements in general.  
6 Any answer I would give would just be  
7 conjecture on my part and assumptions on my  
8 part.

9 Q. Are you familiar with something  
10 known as the Unitog transaction?

11 A. No.

12 Q. Did KMK ever work on a transaction  
13 involving the Bank of Leipzig?

14 A. I don't know.

15 Q. Did any attorneys from KMK ever  
16 attend Provident Board meetings with respect to  
17 this merger?

18 A. With respect to the Unitog merger?

19 Q. No. With respect to this merger  
20 between Oak Hills and Provident?

21 A. I don't know.

22 MR. BRAUTIGAM: Okay. Let's take  
23 a short break. I want to review my notes and  
24 documents.

25 (Brief recess.)

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1 A. I don't understand the question to  
2 the extent I don't know what information you're  
3 talking about verifying.

4 Q. Let's talk about Provident  
5 approving the transaction. Presumably the  
6 Provident Board voted to acquire Oak Hills; is  
7 that correct?

8 MR. FISCHER: Objection.

9 MS. ROWE: Objection.

10 A. Again, I don't have any specific  
11 knowledge of the vote of the Provident Board  
12 beyond the information presented in the proxy  
13 statements and drafts of proxy statements  
14 before me.

15 Q. Right. And how is the information  
16 presented in the proxy statements and in the  
17 draft of proxy statements verified?

18 MR. FISCHER: Objection.

19 MS. ROWE: Objection.

20 MR. FISCHER: He's already  
21 testified he didn't work on it. You're asking  
22 him to speculate and guess and we've been doing  
23 this for hours. I object to this continued  
24 harassment.

25 A. Again, I do not know how this

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1 BY MR. BRAUTIGAM:

2 Q. Mr. Winstead, was it necessary for  
3 someone at KMK to form an opinion with respect  
4 to OHSL's directors?

5 MR. FISCHER: Objection to the  
6 form.

7 MS. ROWE: Objection. Opinions  
8 about what?

9 A. I don't understand the question.

10 Q. Okay. As part of the due  
11 diligence process, was someone at KMK or KMK  
12 collectively required to form an opinion as to  
13 the competence, expertise, sophistication of  
14 OHSL's directors?

15 MS. ROWE: Objection.

16 MR. FISCHER: Objection.

17 A. I don't know.

18 MR. BRAUTIGAM: Okay. I'd like to  
19 inquire with respect to what Mr. Fischer said I  
20 could inquire into earlier when we got back  
21 from lunch.

22 MR. FISCHER: Right.

23 MR. BRAUTIGAM: And I have to say  
24 frankly, I didn't understand what you said. So  
25 I'm interested in the content of discussions in

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1 this five hour meeting that --

2 MR. FISCHER: Objection. He did  
3 not say five hour meeting. He said less than  
4 five hours.

5 MR. BRAUTIGAM: Okay.

6 MR. FISCHER: And he said yes.

7 MR. BRAUTIGAM: Well, that's the  
8 meeting that I'm interested in talking about.

9 MR. FISCHER: Yes.

10 MR. BRAUTIGAM: Is it now your  
11 position that I can inquire as to what happened  
12 at that meeting?

13 MR. FISCHER: I think the problem  
14 may have been a miscommunication, based upon  
15 the fact I think your questions were to Mr.  
16 Winstead whether or not I represented him and  
17 he answered yes, which was correct. As he also  
18 has testified, I'm counsel to the firm.

19 This was a meeting because, I  
20 believe, you or somebody asked for a deposition  
21 of people of the firm and thus the privilege  
22 would apply to KMK for that meeting and not to  
23 Provident. Provident's privilege would be in  
24 regard to rendition of legal services to them.

25 I was conducting that meeting as

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1 Q. How did you first learn that your  
2 testimony was sought in this case?

3 A. At that meeting. Or it may have  
4 been an e-mail from Mr. Fischer regarding the  
5 meeting that referenced the purpose of the  
6 meeting.

7 Q. You did not know that this was the  
8 subject of motion practice?

9 MR. FISCHER: Objection. Do you  
10 understand what motion practice is?

11 A. No.

12 Q. Okay. You did not know before  
13 this meeting that this was the subject of a  
14 discovery dispute, a fight between KMK firm and  
15 me with respect to whether or not we get your  
16 deposition and depositions of other KMK  
17 attorneys?

18 MR. FISCHER: Objection to the  
19 form. Go ahead.

20 A. No. I didn't have any knowledge  
21 regarding the dispute or the ongoing nature of  
22 when or -- the disputed nature of our testimony  
23 here -- my testimony here today.

24 Q. Okay. Until today you've never  
25 seen any filings in the Thiemann or the Meier

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1 counsel to the firm. In that context, and  
2 without waiving any other privilege, I'm  
3 willing to let you ask him questions about that  
4 meeting.

5 BY MR. BRAUTIGAM:

6 Q. Okay. Great. Do you have this  
7 meeting in mind?

8 A. Presently, yes.

9 Q. Okay. And if I remember  
10 correctly, you were at the meeting along with  
11 Mr. Matthews, Mr. Reuter, Mr. Weiss, Mr.  
12 Fischer, Mr. Burke and Ms. Rowe. Is that  
13 correct?

14 A. That's my recollection.

15 Q. Okay. Who called the meeting?

16 A. My recollection is that Mr.  
17 Fischer called the meeting.

18 Q. Okay. And what was the purpose of  
19 the meeting?

20 MR. FISCHER: To your knowledge.

21 A. My understanding and knowledge was  
22 it was to inform certain attorneys at KMK that  
23 the request had been made that we give  
24 depositions as witnesses in the matter -- this  
25 matter.

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1 case. Is that correct?

2 MR. FISCHER: When you -- just to  
3 clarify, when you say filings, you're talking  
4 about pleadings filed in the court?

5 Q. Yes.

6 A. Other than the subpoena that was  
7 delivered regarding my appearance here today, I  
8 don't recall seeing any, any filings or motions  
9 or any documents regarding this ongoing  
10 litigation matter.

11 Q. Well, you did get the witness fee,  
12 right?

13 A. Yes.

14 MR. FISCHER: That's not a filing.

15 Q. Okay. Well, he said other  
16 documents as well. Neither is a subpoena.  
17 Okay. When did this meeting take  
18 place?

19 A. I don't recall specifics. To the  
20 best of my recollection, July of 2003.

21 Q. Was this during a weekday?

22 A. Yes.

23 Q. And who said what at the meeting?

24 A. My recollection is that Mr.

25 Fischer introduced himself as -- in his role as



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1 counsel with KMK, counsel to the firm. Again,  
2 just some general statements as to this  
3 litigation that we were -- that certain  
4 attorneys were being asked to appear as  
5 witnesses in this -- in this matter.

6 I seem to recall we -- giving very  
7 brief around the table as to what we were --  
8 what we -- what our involvement was in the  
9 transaction. And then Mr. Fischer and I left  
10 for a separate meeting just between us.

11 Q. Okay. During this meeting, you --  
12 MR. FISCHER: Again, we're talking  
13 about the meeting with everybody.

14 MR. BRAUTIGAM: Yes.

15 MR. FISCHER: Not the separate  
16 one.

17 MR. BRAUTIGAM: Not the separate  
18 one. We're not there yet.

19 MR. FISCHER: Okay.

20 BY MR. BRAUTIGAM:

21 Q. During the meeting, you said that  
22 Mr. Fischer essentially introduced himself as  
23 counsel for KMK; is that right?

24 A. Yes. The meeting was held under  
25 the auspices of Mr. Fischer in his role -- as

1 representation.

2 Q. Have they ever represented KMK in  
3 the litigation?

4 A. I don't know. To my knowledge,  
5 no, but I don't know the answer to that.

6 Q. Okay. You also said that Mr.  
7 Fischer made some general statements regarding  
8 the litigation. With as much specificity as  
9 you can recall, please tell me what Mr. Fischer  
10 said.

11 A. I have -- I don't recall specific  
12 language or specific comments. It was  
13 generally a discussion, presentation regarding  
14 your request that we appear as witnesses,  
15 certain discussion about, in a very general  
16 nature, as to the reasons that we would be  
17 required to testify as witnesses.

18 I seem to recall some discussion  
19 that -- regarding when that would be, requests  
20 for when our availability would be to come in.  
21 There was some discussion, as I recall, as to  
22 when -- whether it would be at KMK's office or  
23 whether we would come to your office, maybe  
24 some discussion as to whether we would be  
25 subpoenaed or not. That may have been a

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1 opposed to his role as a litigation partner in  
2 the firm, and his role as counsel to the firm.

3 Q. Did Mr. Burke and Ms. Rowe  
4 introduce themselves and state what their role  
5 was vis-a-vis Mr. Fischer?

6 A. I don't recall any specific  
7 introductions or characterizations by either  
8 Mr. Burke or Mr. Rowe.

9 MR. FISCHER: Ms. Rowe.

10 A. Ms. Rowe, I'm sorry, it's the  
11 second time I've said that -- regarding their  
12 role.

13 Q. Did you have an understanding as  
14 to -- about the time of this meeting, as to  
15 what their role is in this litigation?

16 A. Yes.

17 Q. What is your understanding of  
18 their role?

19 A. They represent Provident in this  
20 litigation matter.

21 Q. Okay. Is it your understanding  
22 that they represent anyone else in the  
23 litigation?

24 MS. ROWE: Objection.

25 A. I don't know the extent of their

1 separate conversation.

2 MR. FISCHER: Don't discuss any  
3 separate conversations, just the one that we're  
4 talking about.

5 A. That's the extent of that -- of  
6 the general meeting with all of the parties  
7 that I referenced before.

8 Q. Okay. What did Mr. Fischer say  
9 with respect to why you might be called to  
10 testify?

11 A. My recollection is that we are  
12 providing testimony as factual witnesses as to  
13 what we -- the tasking that we did with respect  
14 to the merger.

15 Q. And the only way that the  
16 plaintiffs would be able to get testimony of  
17 what KMK did regarding the merger would be  
18 through the testimony of KMK attorneys,  
19 correct?

20 MR. FISCHER: Objection.

21 MS. ROWE: Objection.

22 A. I don't know.

23 MR. FISCHER: Do you know the  
24 answer to that?

25 A. I don't know that.

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1 MR. FISCHER: Okay.  
 2 Q. Can you think of any other way the  
 3 plaintiffs and the Dinsmore defendants could  
 4 get information with respect to what KMK  
 5 attorneys did during the merger, other than by  
 6 asking KMK attorneys at depositions and later  
 7 at trial?  
 8 MR. FISCHER: Objection.  
 9 Relevance, waste of time. There's no proof  
 10 that we'll be testifying at trial.  
 11 A. I'm not sure I understand your  
 12 question, but if your question is what specific  
 13 acts KMK attorneys did or -- did during this  
 14 transaction, it would appear through the  
 15 process of discovery of documents KMK  
 16 attorneys' names appear on certain documents.  
 17 That would seem to be a way to gather  
 18 information regarding what role specific KMK  
 19 attorneys provided. I'm not sure of the  
 20 specific tools available to you through the  
 21 civil rules to obtain additional information --  
 22 additional discovery information.  
 23 Q. Right. And does it seem logical  
 24 to you that the plaintiffs would seek the  
 25 testimony of KMK attorneys to explain what they

1 MR. BRAUTIGAM: I do the best I  
 2 can, Pat.  
 3 MR. FISCHER: Still wasting time.  
 4 THE WITNESS: Can you repeat the  
 5 question, please?  
 6 (Record read by Reporter.)  
 7 MS. ROWE: Objection.  
 8 MR. FISCHER: Objection. He  
 9 doesn't represent the plaintiffs.  
 10 A. I don't know if it's logical or  
 11 illogical. I don't have an answer.  
 12 BY MR. BRAUTIGAM:  
 13 Q. Okay. Getting back to this  
 14 meeting, the initial meeting with everyone  
 15 present, can you remember anything else that  
 16 Mr. Fischer said to begin the meeting?  
 17 MR. FISCHER: Objection. Asked  
 18 and answered.  
 19 A. I don't remember his specific  
 20 comments or any specific opening remarks.  
 21 Q. Okay. Did Mr. Burke say anything  
 22 at this point in the meeting?  
 23 A. I don't recall any specific  
 24 comments Mr. Burke made at this meeting.  
 25 Q. Do you recall -- did he say

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1 did with respect to various documents?  
 2 MR. FISCHER: Objection.  
 3 MS. ROWE: Objection. This is a  
 4 fact witness.  
 5 MR. FISCHER: This is supposedly a  
 6 fact witness, according to your own motions.  
 7 And you're asking him for opinions, logical --  
 8 or in my mind, illogical conclusions, baseless  
 9 questions. If you understand what he's asking,  
 10 go ahead. Otherwise we're going to call for  
 11 the magistrate, because this is ridiculous.  
 12 MR. BRAUTIGAM: Pat, we're doing  
 13 fine without your speaking objections.  
 14 MR. FISCHER: No, it's not a  
 15 speaking objection. I need to make a record so  
 16 that when we go to the magistrate we can put an  
 17 end to this.  
 18 MR. BRAUTIGAM: We're doing fine  
 19 without speaking objections. If you say the  
 20 word objection, that suffices. Now, I know  
 21 it's getting towards the end of the day, you're  
 22 obviously angry, but please --  
 23 MR. FISCHER: I'm not angry.  
 24 We're wasting time. Very inefficient, very  
 25 poor questions.

1 anything generally?  
 2 A. I don't recall any comments from  
 3 Mr. Burke at this meeting.  
 4 Q. Did Ms. Rowe say anything at the  
 5 meeting?  
 6 A. I don't recall any specific  
 7 conversation directed to me or with me. She  
 8 may have made comments through the meeting or  
 9 at the end of the meeting.  
 10 Q. Okay. What do you remember Ms.  
 11 Rowe saying at this meeting?  
 12 A. I don't recall Miss Rowe's  
 13 specific comments. I do recall they weren't  
 14 specifically directed to me.  
 15 Q. Okay. Do you recall generally  
 16 what Ms. Rowe said?  
 17 A. No.  
 18 Q. Do you recall who her comments  
 19 were directed to?  
 20 A. No.  
 21 Q. Was Ms. Rowe taking notes during  
 22 the meeting?  
 23 A. I don't recall.  
 24 Q. Was Mr. Burke taking notes during  
 25 the meeting?

53 (Pages 206 to 209)

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1 A. I don't recall.  
 2 Q. Were you taking notes during the  
 3 meeting?  
 4 A. I recall having a notepad. I  
 5 don't recall taking any notes, however.  
 6 Q. Did Mr. Kreider take any notes  
 7 during the meeting?  
 8 MR. FISCHER: Objection. No proof  
 9 he was there.  
 10 Q. Was Mr. Kreider at the meeting?  
 11 A. To my recollection, no, Mr.  
 12 Kreider was not.  
 13 Q. Okay. Was Mr. Matthews taking  
 14 notes at the meeting?  
 15 A. I don't recall.  
 16 Q. Was Mr. Reuter taking notes at the  
 17 meeting?  
 18 A. I don't recall.  
 19 Q. Was Mr. Weiss taking notes at the  
 20 meeting?  
 21 A. I don't recall.  
 22 Q. Okay. You mentioned that the  
 23 meeting shifted from Mr. Fischer's introductory  
 24 remarks to the four KMK attorneys who I  
 25 mentioned, yourself, Mr. Matthews, Mr. Reuter

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1 Q. Okay. Who spoke next?  
 2 MR. FISCHER: Objection.  
 3 A. I don't recall.  
 4 Q. Okay. What did Mr. Matthews say?  
 5 A. I don't remember the specific  
 6 content of Mr. Matthews' statements. I recall  
 7 Mr. Matthews mentioning his involvement was  
 8 focused on the merger agreements.  
 9 Q. Okay. Was Mr. Burke writing any  
 10 of this stuff down?  
 11 A. I don't recall.  
 12 Q. Did he have a legal pad in front  
 13 of him?  
 14 A. I don't recall.  
 15 Q. Okay. Who spoke after Mr.  
 16 Matthews?  
 17 A. I don't recall.  
 18 Q. Okay. What did Mr. Reuter say?  
 19 A. I don't recall Mr. Reuter's  
 20 specific comments.  
 21 Q. Do you recall it generally?  
 22 A. I don't recall Mr. Reuter's  
 23 general or specific comments.  
 24 Q. Okay. What did Mr. Weiss say at  
 25 this meeting?

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1 and Mr. Weiss, going around the table and  
 2 talking about their involvement in the  
 3 transaction. Is that a fair summary of your  
 4 testimony?  
 5 MR. FISCHER: Objection.  
 6 A. I'm not sure that's a fair  
 7 chronological description, but as a general  
 8 statement, my recollection is the attorneys you  
 9 mentioned, Mr. Matthews, Mr. Weiss, Mr. Reuter  
 10 and myself, gave a brief summary of what our  
 11 involvement was with the transaction, to the  
 12 best of our recollection.  
 13 Q. Okay. What did you say in your  
 14 brief summary?  
 15 A. My recollection is that I stated  
 16 that after four years, I had very little memory  
 17 or recollection of any specifics of the  
 18 transaction. I recall that I may have  
 19 mentioned that Tim Matthews had asked me to  
 20 help him with this transaction. The only thing  
 21 that sticks in my mind from this meeting was my  
 22 statement that I just simply didn't remember  
 23 very much from the transaction four years ago,  
 24 specifically events and details of this  
 25 specific transaction.

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1 A. I don't recall Mr. Weiss' specific  
 2 comments. Again, I don't recall his specific  
 3 comments. At some point one of the KMK  
 4 attorneys, and I don't remember who it was, may  
 5 have mentioned -- may have asked how much time  
 6 the depositions would take as far as whether  
 7 two hours or four hours or those kind of  
 8 questions. I don't remember which KMK  
 9 attorneys made those comments.  
 10 Q. What happened next in this  
 11 meeting?  
 12 A. The -- I think one of the final  
 13 comments was that I would be -- was tagged to  
 14 be the initial attorney to provide testimony  
 15 Then Mr. Fischer and I went separately to  
 16 discuss some specifics.  
 17 Q. Did the general meeting reconvene  
 18 at some point?  
 19 A. No.  
 20 Q. Was there any mention of the fact  
 21 that KMK itself had been sued based on its  
 22 representation in the OHSL-Provident merger?  
 23 MR. FISCHER: Objection. I don't  
 24 recall any specific comments regarding KMK  
 25 being a party to any lawsuit.

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1 Q. You didn't know that until today.  
2 Is that your testimony?

3 A. I don't have any recollection of  
4 KMK being named a party to the lawsuit you  
5 presented to me earlier, or KMK being a party  
6 to any litigation -- being a party to any court  
7 proceeding related to this matter.

8 Q. Did the other attorneys at the  
9 meeting appear to understand that KMK had, in  
10 fact, been named as a defendant in the Meier  
11 action?

12 MR. FISCHER: Objection.

13 MS. ROWE: Objection.

14 MR. FISCHER: Objection. Silly  
15 question.

16 A. I don't have any recollection of  
17 discussions or acknowledgments of what -- what  
18 the various roles of parties were or were not.

19 Q. So you never spoke to the attorney  
20 that's representing KMK in the Meier action; is  
21 that correct?

22 MR. FISCHER: Objection.

23 A. To my knowledge, no.

24 Q. Okay. Since November of 1999,  
25 have you ever spoken to Mr. Burke about any

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1 legal representation.

2 However, I don't have any specific  
3 knowledge regarding this specific litigation to  
4 know whether Mr. Burke or Ms. Rowe would be  
5 considered my attorneys or not my attorneys.

6 Q. So you never considered them to be  
7 your attorneys at any point up to and including  
8 today?

9 MR. FISCHER: Objection.

10 A. No. I think the answer is, I  
11 didn't know if they could be construed as my  
12 attorneys or not my attorneys.

13 Q. So you thought that they might  
14 possibly be your attorneys, correct?

15 MR. FISCHER: Objection.

16 A. Again my answer is, I don't know  
17 under any -- under what particular context they  
18 could be construed as my attorneys or not my  
19 attorneys.

20 Q. Did you ever consider Mr. Burke,  
21 Ms. Rowe or Mr. Ramsey or anyone on the KMK  
22 litigation defense team to be your attorneys?

23 A. Mr. Fischer identified himself as  
24 the attorney who would be representing me at  
25 this deposition. And I've never had any

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1 litigation arising from the OHSL-Provident  
2 merger?

3 MR. FISCHER: Objection.

4 A. Read the question again.

5 (Record read by Reporter.)

6 MR. FISCHER: Objection. Calls  
7 for privileged, work product doctrine protected  
8 information. Don't answer that question.

9 Q. Since November of 1999, have you  
10 ever spoken with Ms. Rowe about anything  
11 related to the OHSL-Provident litigation?

12 MR. FISCHER: Same instruction.

13 Q. Did you ever consider Mr. Burke or  
14 Ms. Rowe or anyone at KMK, other than Mr.  
15 Fischer and Mr. Gilligan, to be your attorneys  
16 in litigation or potential litigation involving  
17 the OHSL-Provident merger?

18 A. I have a very limited factual  
19 understanding and knowledge of the -- of the  
20 litigation, KMK's involvement in the  
21 litigation. As a general statement, Mr.  
22 Fischer and Mr. Gilligan as a general course of  
23 business at KMK are the attorneys when there is  
24 a question as to an attorney -- an attorney and  
25 his role as an attorney at KMK perhaps needing

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1 discussion with Mr. Burke or Ms. Rowe as to --  
2 as to any role they would play regarding  
3 representation of me or any other party. I'm  
4 trying to be specific, so I had no -- no basis  
5 to think whether they were my attorneys or not  
6 my attorneys at any point going forward.

7 MR. BRAUTIGAM: Pat, I'd like you  
8 to reconsider your previous instructions along  
9 the following lines. I'd like to ask him about  
10 conversations that he may or may not have had  
11 with Mr. Burke, Ms. Rowe and Mr. Ramsey. And I  
12 think it would be appropriate for me to say  
13 have you had a conversation, he can answer yes  
14 or no.

15 How many times, how long did these  
16 conversations take, not getting into the  
17 substance. I want to make it clear that I  
18 disagree with your assertion for purposes, but  
19 for the purposes of what remains of this  
20 deposition, I think that those are appropriate  
21 questions.

22 MR. FISCHER: You all stay, it's  
23 just the two of us, we'll leave the documents.

24 MS. ROWE: Since that's on the  
25 record, are you going to respond to the record,

55 (Pages 214 to 217)

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1 because on behalf of Provident, I guess I would  
2 like to respond.

3 MR. FISCHER: Go ahead.

4 MS. ROWE: The position of  
5 privilege vis-a-vis KMK and Provident I think  
6 is clear and undisputed. I'd like the record  
7 to reflect that Mr. Brautigam is laughing at my  
8 statement.

9 MR. BRAUTIGAM: That's not true at  
10 all. In fact, I wrote it down because I  
11 vehemently disagree, but I'm not laughing at  
12 your statement at all.

13 MS. ROWE: Did you not laugh?

14 MR. BRAUTIGAM: I did not laugh.

15 MR. FISCHER: He laughed.

16 MS. ROWE: In any event, I think  
17 there's no dispute that there's attorney-client  
18 privilege between KMK and Provident. To the  
19 extent that Mr. Brautigam's forthcoming  
20 questions are going to seek information that  
21 asks Mr. Winstead to reveal privileged  
22 information relating to KMK's representation of  
23 Provident Bank during the transaction,  
24 Provident is going to assert the privilege.

25 MR. FISCHER: I understand.

1 MR. BRAUTIGAM: About the  
2 OHSL-Provident merger?

3 MR. FISCHER: No.

4 MS. ROWE: Without revealing the  
5 substance.

6 MR. FISCHER: Without revealing  
7 any substance, yes, you can answer that  
8 question.

9 BY MR. BRAUTIGAM:

10 Q. You can answer that yes or no,  
11 right?

12 A. And the question is?

13 Q. Have you ever spoken to Mr. Burke  
14 since November of 1999 about the OHSL-Provident  
15 merger and/or the litigation arising therefrom?

16 A. Yes.

17 Q. Okay. How many times have you  
18 spoken to Mr. Burke on this general topic?

19 A. To my recollection, once.

20 Q. When was that?

21 A. The summer of 2003. I don't  
22 recall a specific date.

23 Q. How long did that conversation  
24 last?

25 A. Not more than 15 or 30 seconds.

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1 MR. BRAUTIGAM: I want to respond  
2 to one thing with Mr. Fischer and Mr. Winstead  
3 still in the room. Ms. Rowe's statement that  
4 anything with respect to Provident's -- excuse  
5 me, KMK's representation in this case is  
6 anything but clear and undisputed.

7 MR. FISCHER: It's absolutely  
8 clear. Thank you.

9 (Brief recess.)

10 MR. FISCHER: What was the  
11 question?

12 BY MR. BRAUTIGAM:

13 Q. Okay. Well, it was a question of  
14 you. The questions I'd like to ask are, did  
15 you ever talk to Mr. Burke about the OHSL-  
16 Provident merger since November of 1999?

17 MR. FISCHER: Other -- objection.  
18 Other than the fact he has to appear as a  
19 witness?

20 MR. BRAUTIGAM: No, at all. And  
21 we'll start November of 1999. I think he can  
22 answer the questions yes or no.

23 MR. FISCHER: I'm going to object.  
24 You can answer the question, have you ever  
25 spoken with Mr. Burke.

1 Q. Okay. Now, I'm going to ask a  
2 question and your attorney will probably  
3 instruct you not to answer it.

4 What was the subject matter of  
5 this conversation?

6 MR. FISCHER: Objection. Don't  
7 answer that question.

8 Q. Okay. Have you ever spoken with  
9 Ms. Rowe since November of 1999 about the  
10 OHSL-Provident merger or the litigation that  
11 arose therefrom?

12 A. Except to the extent that Mrs. --  
13 Ms. Rowe was in the meeting we've discussed,  
14 along with Mr. Burke present, I don't recall  
15 any specific conversations with Ms. Rowe  
16 regarding the OHSL litigation.

17 Q. Okay. Do you recall generally  
18 having conversations with her, even if you  
19 can't recall the specifics?

20 A. Is your question have I had a  
21 conversation since November of 1999 with Ms.  
22 Rowe?

23 Q. On this topic, yes.

24 MR. FISCHER: On this topic?

25 Q. Yes.



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1 MR. FISCHER: Same instruction.  
 2 A. To my recollection, no.  
 3 Q. Okay. Since November of 1999,  
 4 have you had conversations with Mr. Donnellon  
 5 on this topic?  
 6 A. To my recollection, no.  
 7 Q. Same question for Mr. Ramsey.  
 8 MR. FISCHER: Same instructions.  
 9 A. To my recollection, no.  
 10 MR. BRAUTIGAM: Well, it's about  
 11 5:00 and I have agreed to stop at 5:00.  
 12 However, the deposition is not finished, there  
 13 seems to be significant questions of documents  
 14 that we have requested and not produced. Also,  
 15 the assertion of privilege that we believe is  
 16 not well-taken.  
 17 MS. ROWE: What documents were  
 18 requested and not produced?  
 19 MR. BRAUTIGAM: His notes, his  
 20 e-mails.  
 21 MS. ROWE: He said he didn't know  
 22 if he had notes or e-mails.  
 23 MR. FISCHER: You've never said  
 24 they've not been produced. You just asked him  
 25 if he knew where they were.

1 we're done for today. Thank you very much for  
 2 your time, Mr. Winstead.  
 3 MR. FISCHER: We don't agree that  
 4 there will be any further questions of Mr.  
 5 Winstead.

JOHN WINSTEAD, ESQ.

(Deposition concluded at 4:56 p.m.)

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1 MR. BRAUTIGAM: I disagree with  
 2 that, but --  
 3 MS. ROWE: And you do have a  
 4 privileged log as I understand it with respect  
 5 to any documents that were not produced on the  
 6 basis of privilege.  
 7 MR. BRAUTIGAM: Well --  
 8 MS. ROWE: Is that correct?  
 9 MR. BRAUTIGAM: I've said what I  
 10 have to say and I do not believe the deposition  
 11 is over. Plus --  
 12 MR. FISCHER: The court reporter  
 13 is willing to stay. Mr. Buckley is willing to  
 14 stay. Ms. Rowe is willing to stay. Mr.  
 15 Winstead is willing to stay. I'm willing to  
 16 stay. Let's finish it. Any other questions?  
 17 MR. BRAUTIGAM: Pat, we had an  
 18 agreement. You sent out a letter giving these  
 19 limited parameters and I want to abide by the  
 20 agreement. You seem to be driving this and I  
 21 want to accommodate you and I want that to be  
 22 clear on the record.  
 23 MR. FISCHER: Okay. If you want  
 24 to accommodate me, let's continue.  
 25 MR. BRAUTIGAM: Well, no, I think

1 CERTIFICATE  
 2 STATE OF OHIO:  
 3 SS:  
 4 COUNTY OF HAMILTON:  
 5 I, Lee Ann Williams, a duly qualified  
 6 and commissioned notary public in and for the  
 7 State of Ohio, do hereby certify that prior to  
 8 the giving of his deposition, the within named  
 9 JOHN WINSTEAD, ESQ. was by me first duly sworn  
 10 to testify the truth, the whole truth and  
 11 nothing but the truth; that the foregoing pages  
 12 constitute a true and correct transcript of  
 13 testimony given at said time and place by said  
 14 deponent; that said deposition was taken by me  
 15 in stenotypy and transcribed under my  
 16 supervision; that I am neither a relative of  
 17 nor attorney for any of the parties to this  
 18 litigation, nor relative of nor employee of any  
 19 of their counsel, and have no interest  
 20 whatsoever in the result of this litigation.  
 21 IN WITNESS WHEREOF, I hereunto set  
 22 my hand and official seal of office at  
 23 Cincinnati, Ohio this \_\_\_\_ day of  
 24 \_\_\_\_\_, 2003.  
 25 MY COMMISSION EXPIRES:  
 AUGUST 26, 2004 LEE ANN WILLIAMS, RPR/CRR  
 NOTARY PUBLIC-STATE OF OHIO